

11-9-2008

# State v. Willoughby Clerk's Record v. 1 Dckt. 35289

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33350

Vol. 11 of 2

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

-----  
STATE OF IDAHO ----- **LAW CLERK**

DEFENDANT/APPELLANT -----

VS. -----

CHRISTOPHER WILLOUGHBY -----

PLAINTIFF/RESPONDENT -----

TRANSCRIPT ON APPEAL

Appeal from the District Court of the First Judicial  
District of Idaho, in and for the County of Kootenai.

NOV - 9 2000

LAWRENCE WASDEN -----

Attorneys for APPELLANT -----

FREDERICK LOATS -----

PRIVATE ATTORNEY -----

Attorneys for RESPONDENT -----

35289

33350

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO	)	
DEFENDANT/APPELLANT	)	SUPREME COURT NUMBER
	)	
	)	33350
	)	
vs.	)	
	)	
	)	
CHRISTOPHER WILLOUGHBY	)	
PLAINTIFF/RESPONDENT	)	

CLERK'S RECORD

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI  
THE HONORABLE CHARLES W HOSACK, DISTRICT JUDGE  
FIRST JUDICIAL DISTRICT, PRESIDING

FREDERICK LOATS  
ATTORNEY AT LAW  
PO BOX 831  
COEUR D'ALENE ID 83816

LAWRENCE G WASDEN  
ATTORNEY GENERAL  
STATE OF IDAHO  
P.O. BOX 83720  
BOISE, ID 83720

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Date: 10/5/2006

Time: 09:58 AM

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Official District Court - Kootenai County

User: OREILLY

ROA Report

Case: CR-2005-0013471 Current Judge: Charles W. Hosack

Defendant: Willoughby, Christopher Martin

State of Idaho vs. Christopher Martin Willoughby

Date	Code	User		Judge
7/4/2005	BNDS	BROWN	Bond Posted - Surety (Amount 2000.00 )	To Be Assigned
7/5/2005	NODF	BROWN	Notice To Defendant	To Be Assigned
7/6/2005	NEWC	BROWN	New Case Filed - BAC .10/.09	To Be Assigned
	AFPC	BROWN	Affidavit Of Probable Cause	To Be Assigned
	ORPC	BROWN	Order Finding Probable Cause	Don L. Swanstrom
7/11/2005	HRSC	BROWN	Hearing Scheduled (Pre-Trial Conference/Arraignment 07/26/2005 01:00 PM)	To Be Assigned
		BROWN	Notice of Pretrial Conference	To Be Assigned
7/12/2005	HRVC	MILLER	Hearing result for Pre-Trial Conference/Arraignment held on 07/26/2005 01:00 PM: Hearing Vacated	To Be Assigned
	PLNG	MILLER	Notice of Appearance, Plea Of Not Guilty, and Request for Jury trial	To Be Assigned
	MNSP	MILLER	Motion To Suppress	To Be Assigned
	MNLI	MILLER	Motion In Limine	To Be Assigned
	DMSC	MILLER	Demand For Sworn Complaint	To Be Assigned
	DRQD	MILLER	Defendant's Request For Discovery	To Be Assigned
8/3/2005	SRES	CARROLL	Supplemental Response For Discovery	To Be Assigned
	PRQD	CARROLL	Plaintiff's Request For Discovery	To Be Assigned
	PRSD	CARROLL	Plaintiff's Response To Discovery	To Be Assigned
8/4/2005	SUBC	CARROLL	Substitution Of Counsel - w/d cdpa and enter kcpa	To Be Assigned
8/8/2005	ADMR	MITCHELL	Administrative assignment of Judge	Benjamin R. Simpson
	HRSC	MITCHELL	Hearing Scheduled (Pre-Trial Conference 09/13/2005 01:00 PM)	Benjamin R. Simpson
	HRSC	MITCHELL	Hearing Scheduled (Jury Trial Scheduled 09/26/2005 08:30 AM) 9/26-9/29	Don L. Swanstrom
		MITCHELL	Notice of Pre-Trial Conference and Trial	Benjamin R. Simpson
	STRS	MITCHELL	Speedy Trial Limit Satisfied	Benjamin R. Simpson
8/11/2005	MNDQ	MILLER	Motion To Disqualify Judge Marano	Benjamin R. Simpson
8/15/2005	DISA	MITCHELL	Disqualification Of Judge Eugene A Marano-Automatic	Eugene A. Marano
8/23/2005	HRSC	INMAN	Hearing Scheduled (Motion to Suppress/Limine 11/14/2005 01:30 PM) Loats-20	Benjamin R. Simpson
8/24/2005	NOHG	CARROLL	Notice Of Hearing	Benjamin R. Simpson
	MNCN	CARROLL	Motion To Continue & Notice of Hearing	Benjamin R. Simpson
9/14/2005	CONT	INMAN	Hearing result for Jury Trial Scheduled held on 09/26/2005 08:30 AM: Continued 9/26-9/29	Don L. Swanstrom
	INHD	INMAN	Hearing result for Pre-Trial Conference held on 09/13/2005 01:00 PM: Interim Hearing Held	Benjamin R. Simpson
	HRSC	INMAN	Hearing Scheduled (Jury Trial Scheduled 12/19/2005 08:30 AM)	Benjamin R. Simpson

001



Date: 10/5/2006

Judicial District Court - Kootenai County

User: OREILLY

Time: 09:58 AM

ROA Report

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Case: CR-2005-0013471 Current Judge: Charles W. Hosack

Defendant: Willoughby, Christopher Martin

State of Idaho vs. Christopher Martin Willoughby

Date	Code	User		Judge
9/14/2005		INMAN	Notice of Trial	Benjamin R. Simpson
10/3/2005	SUBF	MO'REILLY	Subpoena Return/found-Joshua A Gillmore	Benjamin R. Simpson
10/11/2005	SUBF	OLSON	Subpoena Return/found-Timothy W Carroll	Benjamin R. Simpson
10/12/2005	SUBF	OLSON	Subpoena Return/found-Timothy W Carroll	Benjamin R. Simpson
11/14/2005	INHD	INMAN	Hearing result for Motion to Suppress/Limine held on 11/14/2005 01:30 PM: Interim Hearing Held Loats-20	Benjamin R. Simpson
11/25/2005	SUBF	OLSON	Subpoena Return/found-Timothy T Neal	Benjamin R. Simpson
	SUBF	OLSON	Subpoena Return/found-Timothy W Carroll	Benjamin R. Simpson
11/28/2005	SUBF	JREYNOLDS	Subpoena Return/found Timothy W Carroll	Benjamin R. Simpson
	SUBF	JREYNOLDS	Subpoena Return/found Timothy T Neal	Benjamin R. Simpson
	SUBF	JREYNOLDS	Subpoena Return/found Joshua A Gillmore	Benjamin R. Simpson
12/1/2005	MOTN	CARROLL	Motion for Extension of Time for Filing respondent's Brief	Benjamin R. Simpson
	MNSP	CARROLL	Brief in Opposition to Motion to Suppress/Motion in Limine	Benjamin R. Simpson
12/5/2005	ADVS	INMAN	Case Taken Under Advisement	Benjamin R. Simpson
	BRIE	MCCANDLESS	Brief In Support Of Motion To Suppress	Benjamin R. Simpson
12/6/2005	SUBF	MO'REILLY	Subpoena Return/found-Joshua A Gillmore	Benjamin R. Simpson
12/9/2005	MISC	WATKINS	Findings of Fact, Conclusions of Law	Benjamin R. Simpson
	ORDR	WATKINS	Order To Suppress	Benjamin R. Simpson
12/19/2005	HRHD	RICKARD	Hearing result for Jury Trial Scheduled held on 12/19/2005 08:30 AM: Hearing Held	Benjamin R. Simpson
	BNDE	RICKARD	Surety Bond Exonerated (Amount 2,000.00)	Benjamin R. Simpson
	DSBP	RICKARD	Dismissed By Prosecutor (I18-8004 {M} Driving Under The Influence)	Benjamin R. Simpson
	STAT	RICKARD	Case status changed: closed pending clerk action	Benjamin R. Simpson
	JDMT	RICKARD	Judgment	Benjamin R. Simpson
12/20/2005	APDC	MORELAND	Appeal Filed In District Court	Benjamin R. Simpson
	STAT	MORELAND	Case status changed: Reopened	Benjamin R. Simpson
12/22/2005	ADMR	MORELAND	Administrative assignment of Judge	Charles W. Hosack
	ESTI	CAMPBELL	Estimate Of Transcript Costs	Charles W. Hosack
12/27/2005	STAT	DUBE	Case status changed (batch process)	
2/2/2006	RECT	MORELAND	Receipt Of Transcript/Motion to suppress/ county prosecutor	Charles W. Hosack
2/7/2006	RECT	MORELAND	Receipt Of Transcript: Motion to suppress/Fred Loats	Charles W. Hosack
2/17/2006	NOTS	CAMPBELL	Notice Of Settling Transcript On Appeal	Charles W. Hosack
	NOTS	CAMPBELL	Notice Of Settling Transcript On Appeal - AMENDED (correct name of appellate judge)	Charles W. Hosack

002

Date: 10/5/2006

Time: 09:58 AM

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Judicial District Court - Kootenai County

User: OREILLY

ROA Report

Case: CR-2005-0013471 Current Judge: Charles W. Hosack

Defendant: Willoughby, Christopher Martin

State of Idaho vs. Christopher Martin Willoughby

Date	Code	User		Judge
3/24/2006	ABRF	MCCANDLESS	Appellant's Brief	Charles W. Hosack
4/18/2006	BRFR	MCCANDLESS	Brief Of Respondent	Charles W. Hosack
5/19/2006	HRSC	DOUGLAS	Hearing Scheduled (Appeal Hearing 06/15/2006 03:30 PM)	Charles W. Hosack
	STAT	DOUGLAS	Case status changed: Reopened	Charles W. Hosack
		DOUGLAS	Notice of Hearing	Charles W. Hosack
6/15/2006	HRHD	DOUGLAS	Hearing result for Appeal Hearing held on 06/15/2006 03:30 PM: Hearing Held	Charles W. Hosack
	NOTE	DOUGLAS	SUBMISSIONS OF COUNSEL DUE 6/23 - THEN DEEMED SUBMITTED/UNDER ADVISEMENT	Charles W. Hosack
	DPHR	DOUGLAS	Disposition With Hearing	Charles W. Hosack
6/19/2006	REOP	DOUGLAS	Reopen (case Previously Closed)	Charles W. Hosack
	STAT	DOUGLAS	Case status changed: Reopened	Charles W. Hosack
6/19/2006	STAT	MEYER	Case status changed (batch process)	
6/20/2006	BRFR	MCCANDLESS	Supplemental Brief Of Respondent	Charles W. Hosack
6/29/2006	NOTE	DOUGLAS	REMITTITUR WILL BE FILED/CASE WILL BE REMANDED UPON EXPIRATION OF 42 DAY APPEAL PERIOD	Charles W. Hosack
	JDMT	DOUGLAS	Memorandum Opinion on Appeal	Charles W. Hosack
7/3/2006	STAT	DUBE	Case status changed (batch process)	
8/2/2006	APSC	OREILLY	Appealed To The Supreme Court	Charles W. Hosack
8/16/2006	NOTE	DOUGLAS	NO FURTHER ACTION TO BE TAKEN BY THE DISTRICT COURT UNTIL A REMITTITUR IS RETURNED BY THE DISTRICT COURT	Charles W. Hosack
8/18/2006	NAPL	OREILLY	Notice Of Appeal Due Date From Supreme Court	Charles W. Hosack
8/22/2006	NOTC	MORELAND	Amended Notice of Appeal	Charles W. Hosack
10/2/2006	NLTR	OREILLY	Notice of Lodging Transcript Reporter Anita Self NO PAGE AMOUNT ON NOTICE	Charles W. Hosack

COEUR D'ALENE  
POLICE DEPT

MENT IDAHO UNIFORM CITATION

N<sup>o</sup> 077458

IN THE DISTRICT COURT OF THE 1st JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO

) COMPLAINT AND SUMMONS

vs.

)

) Infraction Citation

) OR

) Misdemeanor Citation

) [ ] Accident Involved

) [ ] Companion Citation

) Attached

Willoughby

Last Name

Christopher

First Name

Martin

Middle Initial

IPUC# CROS-13471

USDOT TK Census #

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other

[ ] GVWR 26001 + [ ] 16+ Persons [ ] Placard Hazardous Materials

DR# 05C18935

Home Address 1015 E Hastings, CPA, ID

Business Address

THE UNDERSIGNED OFFICER (DATE)

I certify I have

State

ID

Race

Sex ☒ M ☐ F

Height

401

Wt.

160

Hair

SDY

Eyes

BLU

DOB

05/21/83

Veh. Lic.#

K224711

State

ID

Yr. of vehicle

96

Make

Honda

Model

Accord

Color

GRN

Did commit the following act(s) on July 4 2005 at 0135 hours.

Vio. #1 DUI - Driving while under the influence of alcohol and/or having a BAC

Code Section

influence of alcohol and/or having a BAC

Vio. #2 of .08 or more to wit BAC by breath

Code Section

.10 / .09, 2nd offense with offense within 5 yrs

Location

1035 W Emma

Hwy

MP

KOOTENAI

County, Idaho.

Date

Officer/Party

Serial#/Address

Dept.

Date

Witnessing Officer

Serial#/Address

Dept.

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of KOOTENAI County, COEUR D'ALENE, Idaho,

located at 324 W. GARDEN after \_\_\_\_\_ and before \_\_\_\_\_

the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Signature

I hereby certify service upon the defendant personally on \_\_\_\_\_, 20\_\_\_\_

Officer

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.

COURT COPY VIOLATION #1

004

STATE OF IDAHO } SS.  
COUNTY OF KOOTENAI }

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI MAGISTRATE DIVISION NO: 20

STATE OF IDAHO,

Plaintiff,

vs.

CLERK DISTRICT COURT

DEPUTY

AFFIDAVIT

CROS - 13471

Defendant

Christopher Willoughby

Timothy Carroll

a Police officer

employed by the Coeur d'Alene City Police Department, do solemnly swear/affirm  
that the attached reports are true and correct copies of my original reports and, further,  
that the attached reports and uniform citation are true and correct accounts of the  
incident leading to the arrest on Idaho Uniform Citation No. 077458

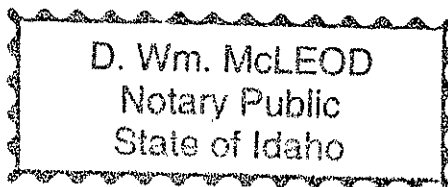
Affiant

SUBSCRIBED and SWORN/AFFIRMED to before me this 4th day of

July, 2005

Notary Public for Idaho

Residing at:



EXP. 01/15/09



NOT.

# SUSPENSION for Failure of Evidentiary Testing

(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

Testing

STATE OF IDAHO

COUNTY OF KOOTENAI

OR # 25818925

Issued To:

Willoughby Christopher Martin  
Last Name First Middle Date of Birth

1015 E Hostings  
Mailing Address

Cooper D'Alone ID 83814  
City State

Montana 07/04/05 0135

Date of Arrest Time of Arrest

2005 JUL 6 AM 10:20

License Class Restrictions

CLERK DISTRICT COURT

Out-of-State Driver's License Number State

Citation #: 077458

Operating CMV? ☐ Yes ☒ No

## SUSPENSION ADVISORY

- I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances.
- You are required by law to take one or more evidentiary tests to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional tests made by a person of your own choosing.
- You do not have the right to talk to a lawyer before taking any evidentiary tests to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
- If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
  - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and will be valid in Idaho for thirty (30) days from the service of this notice of suspension unless modified or restricted by the court, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
  - You have a right to submit a written request within seven (7) days to the Magistrate Court of Montana County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
  - If you do not request a hearing or do not prevail at the hearing, your license will be suspended by the court with absolutely no driving privileges for 180 days if this is your first refusal; if this is not your first refusal in the last five years, your license will be suspended with absolutely no driving privileges for one (1) year.
- If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
  - Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and shall be valid in Idaho for thirty (30) days from the service of this notice of suspension, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
  - I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty days from the date of service on this **NOTICE**, suspending your driver's license or privileges. If this is your first failure of an evidentiary test your driver's license or driving privileges will be suspended for ninety (90) days, with absolutely no driving privileges during the first thirty (30) days. You may request restricted driving privileges for the remaining sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
  - You have the right to an administrative hearing on the suspension before the **IDAHO TRANSPORTATION DEPARTMENT** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and be received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.

THIS SUSPENSION FOR FAILURE OR REFUSAL OF THE EVIDENTIARY TEST(S) IS SEPARATE

FROM ANY OTHER SUSPENSION ORDERED BY THE COURT.

— PLEASE REFER TO THE BACK OF THIS SUSPENSION NOTICE FOR MORE INFORMATION —

**NOTICE OF SUSPENSION:** If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #5 above, commencing thirty (30) days from the date of service of this notice. Date of Service: 07/04/05

**NOTE:** If a blood or urine test was administered, the department may serve a *Notice of Suspension* upon receipt of the test results.

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> <b>DUI:</b> BAC is .08 or higher, §18-8002A       | <input type="checkbox"/> <b>Refusal:</b> (original copy to court) §18-8002     |
| <input type="checkbox"/> <b>Operating CMV:</b> BAC is .04 to less than .08, §18-8002A | <input type="checkbox"/> <b>Operating CMV:</b> BAC is .08 or higher, §18-8002A |
| <input type="checkbox"/> <b>Under 21:</b> BAC is .02 to less than .08, §18-8002A      | <input type="checkbox"/> <b>Blood Test</b> (results pending) §18-8002A         |
|   | <input type="checkbox"/> <b>Urine Analysis</b> (results pending) §18-8002A     |

### This Section Provides Temporary Driving Privileges.

(If the driver was operating a commercial vehicle, this permit will not provide commercial driving privileges of any kind.)

If issued, this permit grants the same driving restrictions and privileges as those granted by the license/permit seized (except as indicated above), and shall be valid for thirty (30) days from the date you were served this *Notice of Suspension* for failure or refusal of the evidentiary test(s), unless it is canceled or restricted by the court.

Permit Issued? ☒ Yes ☐ No License Surrendered? ☒ Yes ☐ No  
A permit was not issued because the license was: ☐ Suspended ☐ Not in Possession ☐ Invalid  
☐ Expired ☐ Issued by Another State ☐ Not Licensed

Signature of Temporary Licensee (if you are issued a permit, it is not valid until you sign it)

Signature of Reporting Officer

Print Name and I.D. Number of Reporting Officer (PRINT)

Agency Code

Telephone Number

Timothy Carroll 451

2802

767 2320

006

Departmental Report # 05218925

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI.

THE STATE OF IDAHO,

Plaintiff,

Christopher Willoughby

DO [REDACTED]  
SSN [REDACTED]  
DL# [REDACTED]  
State [REDACTED]

State of Idaho,

County of Kootenai

COURT CASE NUMBER \_\_\_\_\_  
PROBABLE CAUSE AFFIDAVIT IN SUPPORT  
OF ARREST AND/OR REFUSAL TO TAKE TEST

I, Timothy Carroll, the undersigned, being first duly sworn on oath, depose and say that:

1. I am a peace officer employed by City of Coeur d' Alene.

2. The defendant was arrested on 07/04/05 at 0135 ☒ AM ☐ PM for the crime of driving while under the influence of alcohol, drugs or any other intoxicating substances pursuant to Section 18-8004 Idaho Code. Second or more DUI offense in the last five years? ☒ YES ☐ NO ☐ FELONY ☒ MISDEMEANOR

3. Location of Occurrence: 1035 W Emma Ave

4. Identified the defendant as: Christopher Willoughby by: (check box)

☐ Military ID ☐ State ID Card ☐ Student ID Card ☐ Drivers License ☐ Credit Cards  
☐ Paperwork found ☒ Verbal ID by defendant

Witness: J.Gillmore K37 identified defendant.

Other:

5. Actual physical control established by: ☐ Observation by affiant ☐ Observation by Officer

☒ Admission of Defendant to: Timothy Carroll, ☐ Statement of Witness:

☐ Other:

6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:

(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST: See report narrative.

D.U. I. NOTES

Odor of alcoholic beverage ☒ Yes ☐ No  
Admitted drinking alcoholic beverage ☒ Yes ☐ No  
Slurred speech ☐ Yes ☐ No  
Impaired memory ☒ Yes ☐ No  
Glassy/bloodshot eyes ☒ Yes ☐ No

Sobriety Tests - Meets Decision Points?

Gaze Nystagmus ☐ Pass ☒ Fail  
Walk & Turn ☐ Pass ☒ Fail  
One Leg Stand ☐ Pass ☒ Fail

Crash Involved ☐ Yes ☒ No  
Injury ☐ Yes ☒ No

Other \_\_\_\_\_

Drugs Suspected: ☐ Yes ☒ No

Drug Recognition Evaluation Performed ☐ Yes ☒ No

Reason Drugs are Suspected: \_\_\_\_\_

Prior to being offered the test, the defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code.

☒ Defendant was tested for alcohol concentration, drugs or other intoxicating substances. The test(s) was/were performed in compliance with Sections 18-8003 & 18-8004(4), Idaho Code and the standards and methods adopted by the Department of Law Enforcement.

BAC: 10/09 by: ☒ Breath Instrument Type: ☒ Intoxilyzer 5000 ☐ Alco Sensor Serial#: \_\_\_\_\_

☐ Blood AND/OR ☐ Urine Test Results Pending? ☐ Yes ☐ No (Attached)

Name of person administering breath test: Timothy Carroll Date certification expires: 07/31/07

By my signature and in the presence of a person authorized to administer Oaths in the State of Idaho, I hereby solemnly swear that the information contained in this document and attached reports and documents that may be included herein is true and correct to the best of my information and belief.

Dated: 7/4/2005

Signed: Timothy Carroll  
(affiant)

Subscribed and sworn to before me on 07/04/2005  
(Date)

(or)

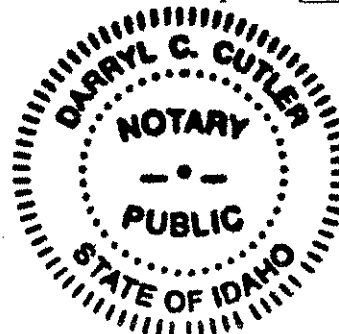
Darryl C. Cutler  
NOTARY PUBLIC FOR IDAHO

PERSON AUTHORIZED TO  
ADMINISTER OATHS.

Title: \_\_\_\_\_

Residing at: Cremet 'A' Lee Police Bldg  
My Commission expires: 03/15/2007

Revised 10-22-99



KOOTENAI COUNTY JAIL  
INTOXILYZER - ALCOHOL ANALYZER  
SN 66-003457  
07/04/2005 SOLUTION LOT NO. 0000004803

SUB NAME=WILLOUGHBY, CHRISTOPHER, M  
SUB DOB [REDACTED]  
O.L.N.=ID/CB168109G  
OPER NAME=CARROLL, TMIOTHY, W  
ARREST AGENCY=2802

TEST	BrAC	TIME
AIR BLANK	.00	02:17 PDT
INTERNAL STANDARDS	PASSED	02:18 PDT
AIR BLANK	.00	02:18 PDT
SIM CHK #0009	.080	02:19 PDT
ACCEPTABLE		
AIR BLANK	.00	02:19 PDT
SUBJECT TEST	.10	02:19 PDT
AIR BLANK	.00	02:20 PDT
SUBJECT TEST	.09	02:20 PDT
AIR BLANK	.00	02:21 PDT

  
\_\_\_\_\_  
OPERATORS SIGNATURE

  
\_\_\_\_\_  
TIME FIRST OBSERVED



CRIME/MISC: **DUI**

CODE: 18-8004

FELONY ☐ MISDEMEANOR ☒DAY ☐ NIGHT ☒ UNKNOWN ☐

OCCURRED FROM: 07/04/05 TIME 1:30

Warrant / CIT:

ARREST: ADULT ☒ JUV ☐

TO: 07/04/05 1:35

077458

REPORTED: 07/04/05 1:30

DISTRICT 84

ADDRESS INCIDENT: 1035 Emma Ave

BUS.NAME:

BUS. PHONE:

DESCRIBE LOCATION **Parking Lot/Parking Garage**VICTIM OR SAME AS BUSINESS ☐RESIDENCE ☐BUS.ADDRESS ☐SAME AS ☐

BUS.PHONE EXT. RES.PHONE MESS.PHONE AGE DOB HT. WT. RACE / SEX

RELATIONSHIP - VICTIM IS:

TO SUSPECT

ADD. VICTS ☐SAME AS VICT. ☐ RP-REPORTING PARTY/P-PARENT/DC-DISCOVERED CRIME

NAME (LAST,FIRST,MIDDLE

CODE RP

RESIDENCE ☐BUS.ADDRESS ☐SAME AS ☐**J. Gillmore K37**

BUS.PHONE EXT. RES.PHONE MESS.PHONE AGE DOB RACE / SEX

EXTENT OF INJURIES

PROPERTY:

VALUE:

ENTRY/WEAPON:

VEHICLE: ST LICENSE YR MAKE MODEL COLOR VIN#  
V ☐ S ☒ ID K224711 96 Honda Accord GRN 1HGCD725XTA03134SUSPECTED ALCOHOL USE V ☐ S ☒ AND/OR DRUG USE V ☐ S ☐

JUVENILES'S PARENTS NOTIFICATION: BY

DATE

TIME

MR.

MS.

MAIDEN NAME:

LAST SEEN WEARING

PICTURE ATTACHED: ☐

SUSPECT NAME (LAST,FIRST,MIDDLE)

RACE / SEX

AGE

HGT.

WT.

HAIR

EYES

**Willoughby****Christopher****Martin****W****M****22****601****160****sdv****blu**

ADDRESS

DR.LIC.#

ST

HOME PHONE

WORK PHONE

**1015 E Hastings Ave****CB168109G****ID (208) 667-7957**OCCUPATION **City of CDA**

WORK ADDRESS

AKA **Chris**POB **CDA, ID**

ARREST/CIT MIRANDA

SCARS/MARKS/TATTOOS: 4 inch scar on stomach

ADD. SUSPECTS ☐ Yes Yes

Additional Officers:

Off. T Neal

Off. J Gillmore

Off. S Avriett

Involved:

Jayde R Hoffman

4881 E Shore Line Drive

Post Falls, ID 83854

Phone Number-777-7594

08/11/88

Reporting Officer:

TWCarr K51

Supervisor:

Deeliso 010

Brock Earl Poole  
3005 Fernan Lake Rd  
CDA, ID 83814  
Phone Number-667-3472  
DOB- [REDACTED]

We were dispatched to the report of a fight at 1035 Emma Ave. I was a two man unit with Officer Neal.

Officer Gillmore and I arrived at the same time. Upon arrival there was no fight. There was a vehicle with several individuals around it parked toward the rear of the apartment complex. We spoke with several individuals on scene who all told us there was no fight at the complex.

I approached Officer Gillmore who advised he had a male detained who was possibly driving while under the influence. Officer Gillmore explained to me that when he pulled into the complex Christopher was getting into the drivers seat of a green Honda Accord on scene, Idaho Plate K224711. Officer Gillmore asked me to investigate this further.

I then made contact with Christopher Willoughby. When I made contact with Christopher I noted his eyes were glassy and bloodshot. I asked Christopher some questions. While I was speaking with Christopher he told me he was drinking beer and had 3 or 4 beers approximately a hour and a half before he arrived on scene. Christopher was at the apartment complex to drop off a friend. He drove his vehicle from his residence to the apartment complex. Christopher also stated he took medication called Copaxon at approximately 3 pm this evening and he was under the care of a doctor for multiple sucroses. Christopher said his knees "wobble" from the multiple sucroses but he did not think it would prevent him from standing on one leg. Christopher also thought there might be a "little reaction" if he tried to walk in a straight line. Christopher did not have any recent head injuries and has not been involved in an accident lately. Christopher rated his overall health between good and poor. Christopher was not wearing glasses or contacts. While I was speaking with Christopher I could detect the strong smell of an alcoholic beverage on his breath.

I had Christopher preform some field sobriety tests to determine if he was under the influence of an alcoholic beverage. The tests were preformed on a level and paved parking lot and free of any debris. Chris failed the field sobriety tests (see attached alcohol influence report). I placed Christopher under arrests for DUI.

I transported Christopher to PSB. Upon arrival at PSB, I checked Christopher's mouth and then observed him for a 15 minute period. I observed Christopher from 2 to 4 feet away. I read Christopher the Notice of Suspension Form and had Christopher initial the form stating he understood it. Once the 15 minute period was up I had Christopher deliver two proper samples of breath into the Intoxilyzer. Christopher's results were a .10/.09. I told Christopher his results and he was under arrest for DUI. I read Christopher his Miranda Warnings and Christopher agreed to speak with me. I completed the DUI Interview (see attached form). I had dispatch run a drivers license check on Christopher. Christopher had one previous DUI, conviction date 01/19/03.

#### Evidence

1 CDAPD video tape #05-289 containing FSFT's for Christopher Willoughby.



**NOTICE OF SUSPENSION** for Failure of Evidentiary Testing  
(Advisory for Sections 18-8002 and 18-8002A, Idaho Code)

DR # 05218925

Issued To:

Willoughby Christopher Martin  
Last Name First Middle Date of Birth  
1015 E Hostings  
Mailing Address  
Coon D'Alone ID 83814  
City State Zip

Kootenai 07/04/05 0135  
Date of Arrest Time of Arrest  
D  
Idaho Driver's License Number License Class Restrictions  
Out-of-State Driver's License Number State  
Citation #: 077458 Operating CMV? ☐ Yes ☒ No

**SUSPENSION ADVISORY**

1. I have reasonable grounds to believe that you were driving or were in physical control of a motor vehicle while under the influence of alcohol, drugs, or other intoxicating substances.
2. You are required by law to take one or more evidentiary tests to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in your body. After submitting to the test(s) you may, when practical, at your own expense, have additional tests made by a person of your own choosing.
3. You do not have the right to talk to a lawyer before taking any evidentiary tests to determine the alcohol concentration or presence of drugs or other intoxicating substances in your body.
4. If you refuse to take or complete any of the offered tests pursuant to Section 18-8002, Idaho Code:
  - A. Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and will be valid in Idaho for thirty (30) days from the service of this notice of suspension unless modified or restricted by the court, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
  - B. You have a right to submit a written request within seven (7) days to the Magistrate Court of Kootenai County for a hearing to show cause why you refused to submit to or complete evidentiary testing and why your driver's license should not be suspended.
  - C. If you do not request a hearing or do not prevail at the hearing, your license will be suspended by the court with absolutely no driving privileges for 180 days if this is your first refusal; if this is not your first refusal in the last five years, your license will be suspended with absolutely no driving privileges for one (1) year.
5. If you take and fail the evidentiary test(s) pursuant to Section 18-8002A, Idaho Code:
  - A. Your Idaho driver's license or permit will be seized if you have it in your possession, and if it is current and valid you will be issued a temporary permit. Non-resident licenses will not be seized and shall be valid in Idaho for thirty (30) days from the service of this notice of suspension, provided the license is valid in the issuing state. If you were operating a commercial motor vehicle, any temporary permit issued will not provide commercial driving privileges of any kind.
  - B. I will serve you with this **NOTICE OF SUSPENSION** that becomes effective thirty days from the date of service on this **NOTICE**, suspending your driver's license or privileges. If this is your first failure of an evidentiary test your driver's license or driving privileges will be suspended for ninety (90) days, with absolutely no driving privileges during the first thirty (30) days. You may request restricted driving privileges for the remaining sixty (60) days of the suspension. If this is not your first failure of an evidentiary test within the last five (5) years, your driver's license or driving privileges will be suspended for one (1) year with absolutely no driving privileges of any kind during that period.
  - C. You have the right to an administrative hearing on the suspension before the **IDAHO TRANSPORTATION DEPARTMENT** to show cause why you failed the evidentiary test and why your driver's license should not be suspended. The request must be made in writing and be received by the department within seven (7) calendar days from the date of service of this **NOTICE OF SUSPENSION**. You also have the right to judicial review of the Hearing Officer's decision.

THIS SUSPENSION FOR FAILURE OR REFUSAL OF THE EVIDENTIARY TEST(S) IS SEPARATE FROM ANY OTHER SUSPENSION ORDERED BY THE COURT.

— PLEASE REFER TO THE BACK OF THIS SUSPENSION NOTICE FOR MORE INFORMATION —

**NOTICE OF SUSPENSION:** If you have failed the evidentiary test(s), your driving privileges are hereby suspended per #5 above, commencing thirty (30) days from the date of service of this notice. Date of Service: 07/04/05

NOTE: If a blood or urine test was administered, the department may serve a Notice of Suspension upon receipt of the test results.

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> <b>DUI:</b> BAC is .08 or higher, §18-8002A       | <input type="checkbox"/> <b>Refusal:</b> (original copy to court) §18-8002     |
| <input type="checkbox"/> <b>Operating CMV:</b> BAC is .04 to less than .08, §18-8002A | <input type="checkbox"/> <b>Operating CMV:</b> BAC is .08 or higher, §18-8002A |
| <input type="checkbox"/> <b>Under 21:</b> BAC is .02 to less than .08, §18-8002A      | <input type="checkbox"/> <b>Blood Test</b> (results pending) §18-8002A         |
|   | <input type="checkbox"/> <b>Urine Analysis</b> (results pending) §18-8002A     |

**This Section Provides Temporary Driving Privileges.**

(If the driver was operating a commercial vehicle, this permit will not provide commercial driving privileges of any kind.)

If issued, this permit grants the same driving restrictions and privileges as those granted by the license/permit seized (except as indicated above), and shall be valid for thirty (30) days from the date you were served this Notice of Suspension for failure or refusal of the evidentiary test(s), unless it is canceled or restricted by the court.

Permit Issued? ☒ Yes ☐ No License Surrendered? ☒ Yes ☐ No  
A permit was not issued because the license was: ☐ Suspended ☐ Not in Possession ☐ Invalid  
☐ Expired ☐ Issued by Another State ☐ Not Licensed

Signature of Temporary Licensee (If you are issued a permit, it is not valid until you sign it)

Signature of Reporting Officer: [Signature] Print Name and I.D. Number of Reporting Officer (PRINT)

Agency Code

Telephone Number


2802

769 2320

KOOTENAI COUNTY JAIL  
INTOXILYZER - ALCOHOL ANALYZER  
SN 66-003457  
07/04/2005 SOLUTION LOT NO. 0000004803

SUB NAM [REDACTED], CHRISTOPHER, M  
SUB DOB [REDACTED]  
O.L.N.=ID/CBI68109G  
OPER NAME=CARROLL, TMIOTHY, W  
ARREST AGENCY=2802

TEST	BrAC	TIME
AIR BLANK	.00	02:17 PDT
INTERNAL STANDARDS	PASSED	02:18 PDT
AIR BLANK	.00	02:18 PDT
SIM CHK #0009	.080	02:19 PDT
ACCEPTABLE		
AIR BLANK	.00	02:19 PDT
SUBJECT TEST	.10	02:19 PDT
AIR BLANK	.00	02:20 PDT
SUBJECT TEST	.09	02:20 PDT
AIR BLANK	.00	02:21 PDT

  
OPERATORS SIGNATURE

0201  
TIME FIRST OBSERVED

Christop Christopher Willoughby

05/21/83

Case # 0518925

DUI Interview

Miranda must be read, understood and waived prior to questioning.

Subjects Name Christopher Willoughby Sex X M    F

Date/Time 07/04/05 0230

Circle ~ Y for yes and N for no when marking answers to interview.

Do you have anything in your mouth? X N Mouth Checked Y N Foreign Substance Y If so, what?   

Do you limp? Y N Are you sick? Y N Injured? Y N

Seeing a Dr.? Y N Diabetic? Y N Epileptic? Y N

Do you take insulin? Y N

Have you taken any medication in the last 24 hours? Y N

Prescription? Y N Non-prescription? Y N

Last dose? Copaxan How much? 20 mg

Cocaine? Y N Marijuana? Y N Other?   

Do you have impaired vision? Y N

Do you wear corrective lenses? Y N

Wearing them when stopped/before accident? Y N

Did you work today? Y N Time got off?   

Hours of sleep last night? 8

Were you driving the vehicle? Y N

Anything mechanically wrong with vehicle? Y N

Have you been involved or injured in any collisions in the past 24 hours? Y N

Have you had any alcohol to drink since you were stopped/in the collision? Y N

What?    How much?   

What time did the accident occur?   

Where were you going before you were stopped/accident?

Home

Without looking, what time do you think it is?

0200 Actual time 0230

What street/highway were you on? Opp Emma

Direction of travel? West

Where did you start from? Home What time? 1130

What day of the week is it? Monday Actual day Monday

What City/County are you in? EDA Kootenai

What is the date? 07/04/05 Actual day 07/04/05

Have you been drinking alcoholic beverages? Y N

What have you been drinking? Beer Bud light

How much? 4 When did you start? 1000

Who have you been drinking with? Cousin

Where were you drinking? Home

Time of last drink? 1115 pm

Do you think your ability to drive was affected by your alcohol and/or drug usage? no

Comments   

Attitude	Coordination	Clothes	Eyes	Facial Color	Odor of Intox.
<input checked="" type="checkbox"/> Cooperative	<input type="checkbox"/> Good	<input checked="" type="checkbox"/> Orderly	<input type="checkbox"/> Normal	<input type="checkbox"/> Normal	<input type="checkbox"/> None
<input checked="" type="checkbox"/> Mood Swings	<input type="checkbox"/> Fair	<input checked="" type="checkbox"/> Soiled-How	<input checked="" type="checkbox"/> Watery	<input checked="" type="checkbox"/> Flushed	<input type="checkbox"/> Faint
<input type="checkbox"/> Argumentative	<input type="checkbox"/> Poor	<input type="checkbox"/> Other: <u>  </u>	<input type="checkbox"/> Sleepy	<input type="checkbox"/> Pale	<input type="checkbox"/> Medium
<input type="checkbox"/> Crying	<input type="checkbox"/> Fumbled for License	<input type="checkbox"/> Shoes	<input checked="" type="checkbox"/> Bloodshot	<input type="checkbox"/> Other	<input checked="" type="checkbox"/> Strong
<input type="checkbox"/> Laughing	<input type="checkbox"/> Other: <u>  </u>	Explain: <u>  </u>	<input type="checkbox"/> Pupils Dilated		<input type="checkbox"/> Obvious
<input type="checkbox"/> Other: <u>  </u>			<input type="checkbox"/> Pupils Constrict.		<input type="checkbox"/> Other: <u>  </u>

Speech	Officer's Opinion (of impairment)	Subjects Native Language	Passengers:
<input checked="" type="checkbox"/> Good	<input type="checkbox"/> Slight	<input checked="" type="checkbox"/> English	<u>  </u>
<input checked="" type="checkbox"/> Fair	<input checked="" type="checkbox"/> Obvious	<input type="checkbox"/> Other: <u>  </u>	<u>  </u>
<input type="checkbox"/> Repetitive	<input type="checkbox"/> Extreme		<u>  </u>
<input type="checkbox"/> Fast			<u>  </u>
<input type="checkbox"/> Slurred			<u>  </u>
<input type="checkbox"/> Incomplete resp:			<u>  </u>

Observed the subject during the entire observation period. Y N

During that time the subject did not vomit, eat, drink, smoke, Burp, or place any foreign substance in his/her mouth. Y N

I am certified to operate the Intoxilizer 5000 on the date of This test Y N

014

**Coeur d'Alene City Police Department**  
**INFLUENCE REPORT**

Contacts Yes ☒ No Glasses Yes ☒ No Removed Glasses Yes No

Horizontal Gaze Nystagmus - Eyes track equally Y N

L R

☒ ☒ Eye does not pursue smoothly  
☒ ☒ Distinct Nystagmus at maximum deviation  
☒ ☒ Nystagmus onset before 45 degrees

Comments \_\_\_\_\_

Vertical Nystagmus

Yes \_\_\_\_\_ No ☒

Pupil Size \_\_\_\_\_

Dilated \_\_\_\_\_

Constricted \_\_\_\_\_

Normal \_\_\_\_\_

(Circle) Surface Paved Gravel Dirt Grass Grade Level Slight Mod. Lighting - Day Dark Street Light

WALK AND TURN - Failed to Follow Directions ☒ N Comments T

Can't keep balance ☒ N Comments \_\_\_\_\_

Starts too soon Y N Comments \_\_\_\_\_

Stops too soon Y N Comments \_\_\_\_\_

Improper Turn ☒ N Comments \_\_\_\_\_

UP BACK

☐ Stops Walking ☐

UP BACK

☐ Misses Heel to Toe ☐

UP BACK

☐ Steps off Line ☐

UP BACK

☒ Raises Arms ☐

UP BACK

☐ Puts Foot Down ☐

UP BACK

☒ Wrong No. of Steps ☐

ONE LEG STAND - Failed to Follow Directions Y N Comments \_\_\_\_\_

Left \_\_\_\_\_ Right \_\_\_\_\_ (Mark which leg was used)

Sways while ☒ N

Balancing Specifics \_\_\_\_\_

Uses Arms ☒ N

To Balance Specifics \_\_\_\_\_

Hopping Y N

Specifics \_\_\_\_\_

Puts Foot ☒ N

Down Specifics \_\_\_\_\_

Puts Foot down and Stopped before told to

ABC's - Highest grade completed \_\_\_\_\_ Knows English alphabet? Y N

Failed to Follow Directions Y N Comments \_\_\_\_\_

(Put a slash over or circle letters missed - Explain letters stated out of order.)

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Counting - Requested count from \_\_\_\_\_ to \_\_\_\_\_ and then \_\_\_\_\_ back to \_\_\_\_\_

Failed to Follow Directions Y N Comments \_\_\_\_\_

Unusual Actions/Statements

COEUR D'ALENE  
POLICE DEPARTMENT

IDAHO UNIFORM CITATION

Nº 077458

IN THE DISTRICT COURT OF THE 1st JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO

) COMPLAINT AND SUMMONS

vs.

) [ ]

Infraction Citation

OR

) ☒ Misdemeanor Citation

) [ ] Accident Involved

) [ ] Companion Citation

) Attached

Willoughby  
Last Name  
Christopher Martin  
First Name Middle Initial

IPUC# \_\_\_\_\_

USDOT TK Census # \_\_\_\_\_

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other \_\_\_\_\_

[ ] GVWR 26001 + [ ] 16+ Persons [ ] Placard Hazardous Materials

DR# 05C18935

Home Address 1015 E Hastings, CDA, ID

Business Address \_\_\_\_\_ Ph# 667 7957

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named Defendant,

Race W

☒ or SS # CB1681093

State ID

Sex ☒ M ☐ F

Height 601 Wt. 160 Hair SDY Eyes BLU DOB 05/21/83

Veh. Lic.# K224711 State ID Yr. of vehicle 96 Make Honda

Model Accord Color GRN

Did commit the following act(s) on July 4 2005 at 0135 hours.

Vio. #1 DUI - Driving while under the influence of alcohol and/or having a BAC

influence of alcohol and/or having a BAC Code Section

Vio. #2 of .08 or more to wit BAC by breath

.10 / .09, 2nd conviction with offense within 5 yrs Code Section

Location 1035 W Emma

Hwy MP KOOTENAI County, Idaho.

07/04/05 Timothy Cannon K51 CDAPD  
Date Officer/Party Serial#/Address Dept.

Date \_\_\_\_\_ Witnessing Officer \_\_\_\_\_ Serial#/Address \_\_\_\_\_ Dept. \_\_\_\_\_

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of KOOTENAI County, COEUR D'ALENE, Idaho,

located at 324 W. GARDEN after \_\_\_\_\_ and before \_\_\_\_\_

the \_\_\_\_\_ day of \_\_\_\_\_, 2005, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.  
I acknowledge receipt of this summons and promise to appear at the time indicated.

Booked July 10 1:55 PM  
Defendant's Signature

I hereby certify service upon the defendant personally on \_\_\_\_\_, 20\_\_\_\_

Officer \_\_\_\_\_

NOTICE: See reverse side of your copy for PENALTY and COMPLIANCE instructions.

COURT COPY VIOLATION #1

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF  
KOOTENAI MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

AFFIDAVIT

Defendant

Christopher Willoughby

I, Timothy Carroll, a Police officer  
employed by the Coeur d'Alene City Police Department, do solemnly swear/affirm  
that the attached reports are true and correct copies of my original reports and, further,  
that the attached reports and uniform citation are true and correct accounts of the  
incident leading to the arrest on Idaho Uniform Citation No. 077458.

Affiant

SUBSCRIBED and SWORN/AFFIRMED to before me this 4TH day of

July, 2001.

Notary Public for Idaho

Residing at:

ROSE G  
EXP. 01/15/09

D. Wm. McLEOD  
Notary Public  
State of Idaho

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

ORDER FINDING PROBABLE CAUSE

Christopher Willoughby  
Defendant,

CITATION NUMBER 077458

The above-named defendant having been charged with, or arrested for, the  
offense(s) of DUI 18-8004

and the Court having examined the affidavits of Timothy Carroll,  
the Court finds probable cause, based on substantial evidence,  
for believing that said offense has been committed and that the said defendant  
committed it.

IT IS THEREFORE ORDERED that a Warrant or Summons may be issued for  
the arrest of the above-named defendant, or, if the defendant has been arrested without  
Warrant, that the defendant may be detained, and that he/she may be required to post  
bail prior to being released.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Magistrate

ORDER FINDING PROBABLE CAUSE

PD #133

017



0201

**ARREST-BOOKING INFORMATION SHEET**  
KOOTENAI COUNTY PUBLIC SAFETY BUILDING

Booking # \_\_\_\_\_

Name ID # \_\_\_\_\_ Date 07/04/05

Accepted by:	<u>2240</u>
Agency Report #	<u>05018925</u>
BAC	<u>.10</u> <u>1.09</u>
Warrant Check	_____
Prob. Check	_____
Prob. Officer	_____
Locker #	<u>282</u>
Location	_____
Hold For:	_____
For DUI Charge:	_____
Was Call Requested	<u>0235</u>
Was Call Made	_____

**ARRESTEE:**

Name Willoughby Christopher Martin  
Last First Middle

AKA Chris

Address 1015 E Hastings

City CDA ST ID Zip 83814

Home Phone CG 77957 7045048 SS# \_\_\_\_\_

City/State of Birth CDA ID DOB \_\_\_\_\_

D.L. # \_\_\_\_\_ State ID Occupation Recreation sports Work Phone # 769 2250

**PHYSICAL DESCRIPTION:**

Height 6' 01" Weight 160 Sex M Hair SDY Eyes BLU

Race W Glasses Y Contacts Y Facial Hair Beard

Scars, Marks, Tattoo's 4 inch scar stomach

Clothing Description Jeans, Tennis shoes - Button shirt

**ARRESTING OFFICER INFORMATION:**

Date / Time of Arrest 07/04/05 0135 Location 1053 Emma Dist 84

Arresting Officer TW Carroll # K51 Agency CDAPD Arrival at PSB 0145

**CHARGES AND BAIL:** ARREST TYPE: (ON-VIEW) (WRNT) (CITIZEN) (OTHER)

M/F	Code	Charges	Bail	Sentence	Warrant or Case #
1. <u>M</u>	<u>12-8004</u>	<u>DUI</u>	<u>2000.00</u>		
2.					
3.					
4.					
5.					
6.					

Is the arresting officer aware of any mental or physical conditions this inmate may have which might affect his/her safety or ability to be held without special attention by jail staff? ☐ No, ☒ Yes (Explain) MS

**VEHICLE INFORMATION:**

Vehicle Lic. K 224711 ST ID YR 96 Make Honda Model Accord Body 2 Dr Color(s) GRN

Vehicle Disposition Towed to sheriff's

**CITIZEN ARREST:**

I hereby arrest the above named suspect on the charge(s) indicated and request a peace officer to take him - her into custody. I will appear as directed and sign a complaint against the person I have arrested.

Arresting Person Signature	Address	Phone #			
Arresting Persons Name (printed)	Race	Sex	DOB	Employer	Phone #
Officer	ID #	Approved By	ID #	Date	

**VICTIM'S RIGHTS INFORMATION:** Code: P=Physical Inj. T=Threat of Phy. Inj. S=Sexual Offense

Name:	Code	Mult. Victims	Address:	Phone:	
	Yes	No			
Occupation:	Race/Sex	Age	DOB	Business Address:	Bus. Phone:

CLASS D

**Idaho**

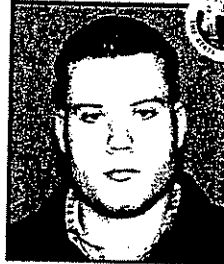
**DRIVER'S  
LICENSE**

EXPIRES: 05/21/2008

NUMBER: **CB168109G**

ISSUED: 11/19/2004

RSTS:  
ENDOR



WILLOUGHBY, CHRISTOPHER M

3410 BRISTOL  
COEUR D'ALENE, ID 83815

DATE OF BIRTH

05/21/1983

SEX: M

HEIGHT: 6'01"

WEIGHT: 160

HAIR: SDY

EYES: BLU

*Chris Willoughby*

019

Sent to State

DUI

Case # 05C18925

Suspect - Christopher Willoughby DOB 05/21/83

Date 07/04/05

Evidence

CDA PD Tape # 05-289

containing FST's for Christopher Willoughby  
recorded on video system in room 1042

## COEUR D'ALENE POLICE IMPOUND REPORT

Report# 05C18995Citation# —Parking Ticket# —District: 8Date: 07/04/05Time: 0141Location: 1053 W. Emma Ave

Abandoned ☐ Arrest ☒ Hazard ☐ Evidence ☐ Private Property ☐  
Recovered Stolen ☐ Accident ☐

Describe if Hazard or Private Property (not aband) —Year: 96Make: HondaModel: AccColor: GreenVin# 1HGC0725xTA031342Plate# K224711State: IDOdometer: 95805Locked ☐ Unlocked ☒ Keys: Yes ☒ No ☐ Running Condition: Yes ☒ No ☐ Unk ☐Interior Condition: Good ☐ Fair ☒ Poor ☐Exterior Condition: Good ☐ Fair ☒ Poor ☐New Damage: Yes ☐ No ☒If Yes, Describe: —Inventory: various clothes, stereo speakers, 1 beer can 12 ounce  
Natural light unopenedRegistered Owner Name: Christopher M. WilloughbyAddress: 3410 Bristol Cir ID. 83815Towing Firm: Schaffers TowingAddress: 625 W. Dalton AveVehicle Value: \$ 300Police Hold: Yes ☐ No ☒Additional Instructions: (None.)Officer: S. Gilmore K# 37

Tow Company Custody Receipt: I received the described property and equipment on the time and date noted.

[Signature]  
Signature

07/04/05  
Date

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI  
FILED:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CLERK DISTRICT COURT

DEPUTY

STATE OF IDAHO,

Plaintiff,

vs.

Christopher Willoughby

Defendant,

CR05-13471  
ORDER FINDING PROBABLE CAUSE

CITATION NUMBER 077458

The above-named defendant having been charged with, or arrested for, the  
offense(s) of DUI 18-8004

and the Court having examined the affidavits of Timothy Carroll  
\_\_\_\_\_, the Court finds probable cause, based on substantial evidence,  
for believing that said offense has been committed and that the said defendant  
committed it.

IT IS THEREFORE ORDERED that a Warrant or Summons may be issued for  
the arrest of the above-named defendant, or, if the defendant has been arrested without  
Warrant, that the defendant may be detained, and that he/she may be required to post  
bail prior to being released.

DATED this 18 day of July, 2005

Don L. Juarez  
Magistrate

ORDER FINDING PROBABLE CAUSE

PD #133

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2005 JUL -8 PM 2:33

**FREDERICK G. LOATS**

Attorney at Law

111 North 2nd Street, Suite 300

P.O. Box 831

Coeur d'Alene, ID 83814

Telephone: (208) 667-6424

Fax: (208) 664-3644

ISB No. 2147

CLERK DISTRICT COURT  
DEPUTY**Attorney for Defendant**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )

Plaintiff, )

vs. )

CHRISTOPHER WILLOUGHBY, )

Defendant. )

Case No. CR-M05

Citation No. 77458

MOTION IN LIMINE

13471

Defendant hereby moves the Court for an Order excluding from evidence at trial the breath tests conducted upon the Defendant, including any testimony relating thereto, by and for the reason that the officer administering said tests failed to follow prescribed procedure prior to collecting breath samples from the Defendant, thereby rendering the results unreliable and inadmissible.

DATED this 8 date of July, 2005.  
FREDERICK G. LOATS  
Attorney for Defendant

## CERTIFICATE OF MAILING

I hereby certify that on this 8 day of July, 2005, a true and correct copy of the foregoing was mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Kootenai County Prosecuting Attorney  
by fax

  
FREDERICK G. LOATS

STATE OF IDAHO } SS  
COUNTY OF KOOTENAI }  
FILED

2005 JUL -8 PM 2:33

**FREDERICK G. LOATS**

Attorney at Law

111 North Second Street

P.O. Box 831

Coeur d'Alene, Idaho 83816-0831

Telephone: (208) 667-6424

Fax: (208) 664-3644

ISB No. 2147

CLERK DISTRICT COURT  
  
DEPUTY

**Attorney for Defendant**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )

Plaintiff, )

vs. )

CHRISTOPHER WILLOUGBY, )

Defendant. )

Case No. CR-M05-  
Citation No. 77458

13471

**MOTION TO SUPPRESS**

Defendant, pursuant to the provisions of Rule 12(b)(3), ICR, hereby moves the Court for an Order suppressing any and all evidence acquired as a result of the initial detention of the Defendant, the subsequent detention of the Defendant, the search of the Defendant's vehicle, and any evidence acquired as a result of the subsequent arrest of the Defendant, including evidentiary testing and/or any post-arrest statements, by and for the following reasons:

1. The initial detention was not supported by a reasonable, articulable suspicion that criminal activity was occurring or had occurred, and therefore was in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article One, §17 of the Idaho Constitution;



2. The subsequent detention of the Defendant was the product of this unconstitutional stop;

3. The Defendant's subsequent arrest not supported by probable cause, and therefore was in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article One, §17 of the Idaho Constitution.

The detention of the Defendant, the arrest of the Defendant, and any evidence acquired as a result of the Defendant's arrest, including any evidentiary testing and/or post-arrest statements attributed to the Defendant, were therefore obtained in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article One, §17 of the Idaho Constitution.

DATED this 8 date of July, 2005.

  
FREDERICK G. LOATS  
Attorney for Defendant

#### CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of July, 2005, a true and correct copy of the foregoing was mailed postage-prepaid addressed to:

Kootenai County Prosecuting Attorney  
by fax

  
FREDERICK G. LOATS

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2005 AUG 11 PM 3:29

CLERK DISTRICT COURT  
*[Signature]*  
DEPUTY

**FREDERICK G. LOATS**  
*Attorney at Law*  
111 North Second Street, Ste. 300  
P. O. Box 831  
Coeur d'Alene, Idaho 83814  
Telephone: (208)667-6424  
Fax: (208) 664-3644  
ISB No. 2147

**Attorney for Defendant**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	Case No. CR-M05-13471
	)	
vs.	)	
	)	
CHRISTOPHER M. WILLOUGHBY,	)	<b>MOTION TO DISQUALIFY</b>
	)	<b>WITHOUT CAUSE</b>
Defendant.	)	

Pursuant to the provisions of Rule 25(a), I.C.R., Defendant hereby moves for the disqualification of the Honorable Eugene A. Marano from presiding as Judge in the above entitled action.

DATED this 11 day of August, 2005.

*It is so  
ordered  
Eugene A. Marano  
8/15/05*

*[Signature]*  
**FREDERICK G. LOATS**  
*Attorney for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of August, 2005, a true and correct copy of the foregoing was sent addressed to:

Resident Chambers of Honorable Eugene A. Marano  
Magistrate Judge  
324 W. Garden Avenue  
Coeur d'Alene, Idaho 83814

Kootenai County Prosecuting Attorney, by fax

  
FREDERICK G. LOATS

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED:

**FREDERICK G. LOATS**

Attorney at Law

111 North Second Street

P. O. Box 831

Coeur d'Alene, ID 83814

Telephone: (208)667-6424

Fax: (208)664-3644

ISB No. 2147

2005 AUG 24 AM 11:23

CLERK DISTRICT COURT

DEPUTY

**Attorney for Defendant**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

CHRISTOPHER M. WILLOUGHBY,

Defendant.


Case No. CR-M05-13471

MOTION TO CONTINUE  
& NOTICE OF HEARING

Defendant moves the Court for an Order continuing the Jury Trial presently scheduled for the 26<sup>th</sup> day of September, 2005 at 8:30 o'clock a.m., before the Honorable Benjamin R. Simpson, Magistrate Judge, by and for the reason that counsel for the Defendant previously filed Pretrial Motions and the first available date to have the Motions heard is November 14, 2005.

Counsel for Defendant intends to call this Motion on for hearing on the 13<sup>th</sup> day of September, 2005, at 1:30 o'clock p.m., at the time set for Pretrial Conference, before the Honorable Benjamin R. Simpson.

DATED this 24 day of August, 2005.

  
**FREDERICK G. LOATS**  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24 day of August, 2005, a true and correct copy of the foregoing was sent addressed to:

Kootenai County Prosecuting Attorney, by fax

  
FREDERICK G. LOATS

Session: Simpson091305P  
Session Date: 2005/09/13  
Judge: Simpson, Benjamin  
Reporter:

Division: MAG  
Session Time: 07:50

Courtroom: Courtroom4

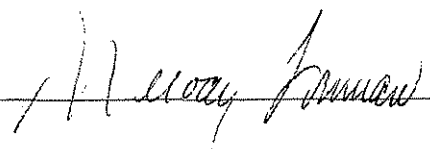
Clerk(s):  
Inman, Melody

State Attorney(s):  
Brooks, Ken  
Christianson, John  
Gardner, Donna  
Madsen, Henry  
Nunley, Shawn  
Swenson, Blake

Public Defender(s):  
Anderson, Stacie  
Chapman, Brad  
Clapin, Michael  
Lawlor, Edward  
Reuter, Dennis  
Schwartz, Christopher

Prob. Officer(s):

Court interpreter(s):



Case ID: 0005

Case number: CR2005-13471  
Plaintiff:  
Plaintiff Attorney:  
Defendant: Willoughby, Christopher  
Co-Defendant(s):  
Pers. Attorney:  
State Attorney:  
Public Defender:

2005/09/13

13:55:49 - Operator  
Recording:  
13:55:49 - New case  
Willoughby, Christopher  
13:56:48 - Judge: Simpson, Benjamin  
calls case for PTC

13:56:59 - State Attorney:

no obj cont PTC and JT

13:57:12 - Judge: Simpson, Benjamin

waives speedy; vacate and reset JT

13:57:29 - Operator

Stop recording:

---

STATE OF IDAHO

-vs-

Case #

Charge (s)

Cr 05-13471

Christopher Willoughby

Date

11-14-05

Time

1:30 p

Tape #

60776

Log#

1

Judge

Simpson

☐ Traffic ☐ 1st Appear. ☐ Disposition ☐ Other

OSE 17th Sep

**APPEARANCES:**

☐ Defendant  
☒ Defense Attorney F. Leato

☒ Prosecuting Atty. Rose Stern  
☐ Other

**FAILURE TO APPEAR:** Defendant having failed to appear, and good cause not shown for such absence,  
**IT IS ORDERED THAT:**

☐ Bond Forfeited  
☐ Bench warrant issued

☐ Referred to Prosecuting Attorney  
☐ Bail Set \$

**PROCEEDINGS & ADVISEMENT OF RIGHTS:**

☐ Defendant is informed of the charges against him/her and all legal rights including the right to be represented by counsel. Defendant understands.  
☐ Defendant advised of effect of guilty plea and maximum penalties, also penalties for subsequent violations. Defendant understands.  
☐ Waived right to counsel  
☐ Court appointed Public Defender Reimb. by  
☐ Court denied court appointed counsel  
☐ Matter continued  
☐ Charge amended  
☐ Notify the Court, in writing, of any address change.

**PRELIMINARY HEARING:**

☐ Statutory time waived ☐ Set preliminary hearing  
☐ Preliminary hearing waived ☐ 14 days ☐ 21 days

**ENTRY OF NOT GUILTY PLEA:**

☐ Set for PTC/Jury Trial ☐ Set for court trial

**ENTRY OF GUILTY PLEA:**

☐ Enters plea freely and voluntarily with knowledge of consequences  
☐ Plea of guilty accepted by the court  
☐ Set for disposition  
☐ Alcohol evaluation waived  
☐ Defendant ordered to obtain alcohol evaluation prior to disposition date

**BAIL:**

☐ Released on own recognizance ☐ Bail set at  
☐ Remanded to the custody of the sheriff ☐ Released on bond previously posted

**OTHER:**

740 call case  
Formal Order Warrant  
# calls Officer [Signature] available at 1100 N. Main  
053



DA Anne i stop challenge

= 1 Stop Anne CPA RD 4 yrs  
POST cert 7-4-05 1:30 AM

1053 Emma Ave dispatched to  
suprae attention in parking lot  
Post Co ID

new car w/ new persons around (4)  
driver, bus, in car

De said no light noticed  
odor alcoholic; glasses eyes &  
droopy

trained DUI detection & invest.  
over 200 4 yrs

opin was DUI

720 apt complex 1000 blk NW corner lot  
turned over to Off. Carroll

DA XE #1

= 1 POST 7-05 cert.

full time '02

7 yrs exp. - prior Univ. Security

revd (Carroll's report  
w/ in NW corner lot

Det  
1

1st on scene - Carroll next

Identifier	Phase of Case
	<p>asked witnesses about fight - said none  ran code there  veh // to stalls  Diagram Area</p>
1230	<p>was told me he drove there  remorse exited car  Dy exited vehicle as I approached it  No video or audio</p>
3609	<p>redirect</p>
#2	<p>Calls Officer Timothy Carroll &amp; Lt Le Dorn  CDA PD 8:10  Prior in Haver MT 4 yrs  POST cert pending in ID  MT 2001</p>
	<p>Dispatch to fight 1053 Emma Ave.  Saw 2 persons near veh. &amp; 2 persons  walking to apt</p>
1500	<p>2 said no fight</p>
	<p>Greene advised DuE male</p>
	<p>mt recall is veh running #1  Diagram correct  Context w/ Dy - eyes gassy &amp;</p>

Identifier	Phase of Case
	Wood shot
DA	prosecution - detention - crim.
1600 #2	XE #2
	apt complex w/ big lot - Arrived Court I parked @ West of - left of Tillmore
PA	no redirect rests
DA	no witnesses
1000 PA	argument case, extensive suspicion use law stands
820/DA	argument US vs Hardy fact specific Sts Bureau to obtain. Dispatch Code makes it custodial situation - use of lts Dy not free to leave. detained
920/	PA submit prints brief 14 days DA respond 7 days

22

**ORIGINAL**  
WILLIAM J. CRIST  
Prosecuting Attorney  
500 W. Garden/Box 9000  
Coeur d'Alene, ID 83816-1971  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
BLAKE G. SWENSON

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2005 DEC -1 PM 2: 22

CLERK DISTRICT COURT

DEPUTY *Theresa L. Smith*  
*Mo*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CHRISTOPHER M. WILLOUGHBY,	)	
	)	CASE NO. CRM05-13471
PETITIONER,	)	
	)	MOTION FOR EXTENSION
vs.	)	OF TIME FOR FILING
	)	RESPONDENT'S BRIEF
STATE OF IDAHO,	)	
	)	
RESPONDENT.	)	

COMES NOW, BLAKE G. SWENSON, Deputy Prosecuting Attorney for Kootenai County, Idaho, and hereby moves this Court for an order granting an extension of time in which to file Respondent's "Answer" in the above entitled matter.

This motion is made on the grounds and for the reasons that support staff did not file in a timely manner. The delay in filing the "Brief" should not impair the court's ability to make an intelligent ruling, and allowing a "Brief" to be filed would enhance the court's ability to make an intelligent ruling.

DATED this 1 day of December, 2005.

*for* *Blake G. Swenson*  
BLAKE G. SWENSON  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 1 day of Dec., 2005, a true and correct copy of the foregoing was mailed to:

FRED LOATS  
FAX 664-3644

Kadams

ORIGINAL

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 N. Government Way  
P.O. BOX 9000  
Coeur d'Alene, ID 83816-9000  
(208) 446-1800

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2005 DEC -1 PM 2: 22

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

CHRISTOPHER WILLOUGHBY,

Defendant.

CASE NO. M05-13471

BRIEF IN OPPOSITION TO  
MOTION TO SUPPRESS /  
MOTION IN LIMINE

COMES NOW the State, by and through R. Reese Sterett, Deputy Prosecuting Attorney, and hereby files its above entitled Brief. The opposition to defense motion is made upon the following:

The Court of Appeals of Idaho has held that an investigative detention must be based upon reasonable suspicion and that this reasonable suspicion must be derived from specific articulable facts that the individual that has been stopped has either committed or is about to commit a crime." State v. Salato, 137 Idaho 260, 264, 47 P.3d 763, 767 (Ct. App. 2002). The standard for establishing reasonable suspicion has a lower threshold than probable cause. Id., at 265, 768 (Ct. App. 2002). The reasonableness of a stop is measured by the totality of the circumstances available to the officer at the time of the stop. Id., at 264, 767 (Ct. App. 2002), citing United States v. Cortez, 449 U.S. 411 (1981), State v. Fry, 122 Idaho 100, 103, 831 P.2d 942, 945 (Ct. App. 1992). Reasonable suspicion that a person stopped either has or is about to commit a crime may be supported

by an informant's tip given to police dispatch and an officer may be expected to take on face value any radio dispatch that he or she receives. Id., at 265, 768 (Ct. App. 2002).

The Court of Appeals of Idaho has recognized that an officer who has lawfully stopped and contacted a suspect for one offense may develop reasonable suspicion for another offense justifying a continued investigatory detention. State v. Schmadeka, 136 Idaho 595, 38 P.3d 633 (Ct. App. 2001), State v. Godwin, 121 Idaho 517, 826 P.2d 478 (Ct. App. 1991), State v. Patterson, 140 Idaho 612, 97 P.3d 479 (Ct. App. 2004). Further, in State v. Reed, Court of Appeals of Idaho upheld the idea that in certain circumstances a officer contact continue a contact with a suspect even after the initial reasonable suspicion for the stop was found to be wrong. State v. Reed, 129 Idaho 503, 927 P.2d 893 (Ct. App. 1996).

In the present matter, the facts, as testified to before this Court on November 14, 2005, set forth sufficient facts to support the investigatory stop and detention of the defendant. The Officers were responding to a radio dispatch regarding a fight and after responding to the subject location, interviewed some individuals, including the defendant, who were standing outside the defendant's vehicle. Based upon the information available to the Officers, it was reasonable for them to contact those individuals to see if any of them were involved in the alleged fight. After the defendant was found to have an odor of an alcoholic beverage and after he admitted to driving to that location, the Officers had reasonable suspicion to transfer the focus of their investigatory detention to the defendant for the crime of driving under the influence based upon the information they had available. Therefore, the defendant's Fourth Amendment rights were not violated in the

present matter. Accordingly, the Defendant's Motion to Suppress / Motion in Limine should be denied.

DATED this 22 day of November, 2005

  
\_\_\_\_\_  
R. REESE STERETT



CERTIFICATE OF MAILING

I hereby certify that on the 1 day of Dec, 2005, a true and correct copy of the foregoing **BRIEF IN OPPOSITION TO MOTION TO SUPPRESS / MOTION IN LIMINE** was caused to be faxed/hand delivered to:

FRED LOATS

Kadams

**FREDERICK G. LOATS**

Attorney at Law

111 North Second Street

P.O. Box 831

Coeur d'Alene, ID 83814

Telephone: (208) 667-6424

Fax: (208) 664-3644

ISB #2147

**Attorney for Defendant**

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED

2005 DEC -5 AM 10:05

CLERK DISTRICT COURT  
DEPUTY  
*Amanda McCloudless*  
no

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

CHRISTOPHER WILLOUGHBY,

Defendant.

Case No. *CV* 2005-000649 13471

**BRIEF IN SUPPORT OF  
MOTION TO SUPPRESS**

The state apparently concedes that the defendant was "stopped", in a constitutional sense, when the police arrived in the parking lot, in close proximity to his vehicle, with their overhead lights on, and that at that point in time he was detained, or not free to ignore their inquiry. The use of an officer's overhead lights is not a signal a driver may ignore, and this distinction has been recognized as significant in determining whether a "stop" has occurred, or the police encounter is merely consensual. See, State v. Mireles, 133 Idaho 690 (Ct. App. 1999).

The defense agrees that the standard is that applicable to a "Terry" stop, whether the police had a reasonable, articulable suspicion that Mr. Willoughby had committed or was about to commit a crime. Terry v. Ohio, 392 U.S. 1 (1968). This information, must be specific to the individual, and


the defense does strongly disagree that such evidence was present in this case.

The police responded to a vague reference to a fight in a parking lot. The caller was not identified. The police responding received their information second-hand, from "police dispatch." The officers did not have any first hand knowledge of a fight, nor had they talked to any witnesses or citizens who claimed to have seen a fight. There was no description given of any of the participants in any fight (indeed, the police learned later that there was, in fact, no "fight").

The initial detention of the defendant, effected by the use of the officer's overhead lights when Mr. Willoughby was in the driver's position of his car, was not justified by any reasonable, articulable suspicion of criminal activity and unconstitutional. This was not a situation where the officers entered a large parking lot and stopped their vehicles some distance away. They parked within a car length of Mr. Willoughby, near the entrance to the lot so that it would have been difficult, if not impossible, for him to leave. The message conveyed was clear, Mr. Willoughby was not free to leave the scene until he had met with the police and this custodial encounter was not justified by *Terry* and its progeny.

There is no question that the police could have talked to Mr. Willoughby, or any others present in the parking lot, about the existence or non-existence of a fight, but this questioning, given the lack of information the police had, required that the police-citizen contact be consensual, and the use of their overhead lights rendered the encounter non-consensual. The Motion to Suppress should therefore be granted.

DATED this 5 day of December, 2005.

  
FREDERICK G. LOATS  
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon counsel for the State by sending the same by facsimile transmission to the Kootenai County Prosecuting Attorney at 446-1833 this 5 day of December, 2005.

  
Attorney for Defendant

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS

FILED: 12-9-05

AT 3:16 O'CLOCK PM  
CLERK, DISTRICT COURT

Barbara Walters  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

PLAINTIFF,

CHRISTOPHER W. WILLOUGHBY,

DEFENDANT.

CASE NO. 2005-13471  
CR2003-15314

FINDINGS OF FACT,  
CONCLUSIONS OF LAW

The Defendant's motion to suppress came on regularly for hearing pursuant to notice on November 14, 2005. The State appeared and was represented by Reese Sterett, Kootenai County Deputy Prosecuting Attorney. Mr. Willoughby appeared and was represented by Frederick Loats.

The defense challenges the initial detention of the defendant based upon a vague dispatch of two police officers to a "Physical fight," in an apartment parking lot. Secondly the defense challenges the initial detention of Mr. Willoughby as not being supported by reasonable suspicion and as continuing too long.

The court having heard the evidence, reviewed the file, heard oral argument, and having considered the post hearing briefs of counsel and now being fully advised in the premises and good cause appearing enters its findings of fact, conclusions of law, and order as follows:

FINDINGS OF FACT:

1. On July 4, 2005, Officers Gillmore and Carroll, of the Coeur d'Alene Police Department, were dispatched to a "Physical fight in progress," in the parking lot of an apartment building located at 1053 W. Emma Avenue in Coeur d'Alene, Kootenai County, Idaho.
2. Officer Gillmore arrived a few seconds before Officer Carroll. They were in separate patrol vehicles and arrived at the parking lot under "Full code," with overhead lights and sirens on. Officer Gillmore parked about 15 feet from Mr. Willoughby's vehicle and Officer Carroll parked just to the west of Gillmore. Both officers left their overhead lights on.

3. When Officer Gillmore arrived he saw a vehicle stopped behind some parked cars. Mr. Willoughby was in the driver's seat. There were three or four other persons present. At least one was a female who was getting out of Mr. Willoughby's car.
4. Mr. Willoughby spontaneously stepped from his vehicle as Officer Gillmore exited his patrol vehicle and asked the persons present where the fight was. The persons present all denied any knowledge of a fight at that location. Officer Gillmore continued to ask about the fight and then noticed that Mr. Willoughby had "Glassy droopy eyes, a long face, and was relaxed." He also smelled the odor of an alcoholic beverage on or about Mr. Gilmore. Mr. Willoughby admitted driving to the location.
5. Based upon his training, experience and observations Officer Gillmore formed the opinion Mr. Willoughby was possibly driving under the influence and asked Officer Carroll to take over for a DUI investigation.
6. Officer Carroll, after performing a DUI investigation, ultimately arrested Mr. Willoughby for DUI.

Mr. Willoughby seeks to suppress all of the evidence of the DUI for the reasons stated above in the second paragraph.

#### CONCLUSIONS OF LAW:

1. When a patrol vehicle has its overhead lights on that can constitute a seizure. "...a motorist may be deemed seized for Fourth Amendment purposes, when a police officer activates the overhead lights of his patrol car. *Citations omitted*, Matter of Mackey, 124 ID 585 (Ct. App. 1993)
2. In the context of the Fourth Amendment, a seizure does not occur unless police conduct communicates to a reasonable person that he was not at liberty to ignore the police and go about his business. State Jordan, 122 Idaho at *Citations omitted*, I.B.I.D
3. In the case at bar two police cruisers entered the parking lot with overhead lights on and sirens on. The patrol vehicles stopped in close proximity to Mr. Willoughby's parked car, the officers left the overhead lights on, exited their vehicles and began to question the 4-5 persons present about the fight. All of those questioned submitted to the officers' request for information. None of them left. Under the totality of circumstances the court concludes that the persons present, including the defendant were not free to leave and were seized. Mackey, *Supra*.
  - a. In order to constitute a lawful seizure the officers must have had, at the time the seizure occurred, a reasonable suspicion to believe that the defendant or the others present were engaged in or about to engage in some unlawful conduct. State v. Parkinson, 135 ID 357 (Id. App. 2000). Reasonable suspicion is determined under a

totality of the circumstances. *State v. Sheldon*, 139 ID 980 (Ct. App. 2003).

The issue then is did the officers have, at the time they contacted the 4-5 persons at the scene, reasonable suspicion to believe the persons seized were engaged in, or about to engage in criminal activity with their overhead lights on, in close proximity to the per

As the officers rolled to a stop near Mr. Willoughby's vehicle with their lights on the information they had was that they were dispatched to a fight in progress at the location. They had no other information about who called that information in. they did not have any information about who was involved in the fight or if there was a vehicle was involved. Under these circumstances the court concludes the officers had no reasonable suspicion to justify the seizure of Mr. Willoughby, or the other persons present. The court is persuaded that this case is similar to a recent

*See eg; State v. Cerino* 2005 WL 1529654 where the circumstances were as follows:

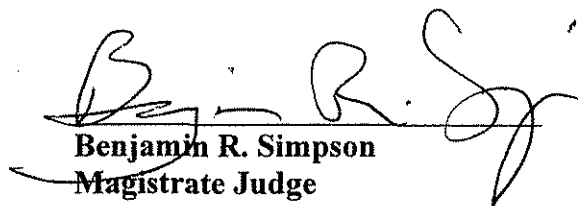
"In the present case, the State concedes that the anonymous tip did not bear sufficient indicia of reliability to create reasonable suspicion. Therefore, our focus is upon the only other knowledge that Detective Reed possessed concerning the vehicle when the stop was initiated. That knowledge was that the pickup was registered to a male and a female, that the male registrant did not possess an Idaho driver's license, and that a male was presently driving the vehicle. The State argues that this information is sufficient to justify an investigative stop because it is reasonable to infer that the male driver of the vehicle was the co-registrant who did not hold an Idaho license. We conclude, however, that this information was insufficient to warrant the intrusion of a vehicle stop.

"First, as to Cerino's driving status, the detective knew only that Cerino had not obtained an Idaho driver's license; he had no information as to whether Cerino held a driver's license from another jurisdiction. More importantly, because Detective Reed had never previously seen Cerino and had received no physical description of him, nothing but the driver's gender "matched" the officer's information about Cerino. In these circumstances there was little basis to infer that the male registrant was driving; it was as plausible and perhaps more likely, that the driver was someone else. It is not unlawful for a person to drive a vehicle that is registered to an unlicensed owner, or for the unlicensed owner to allow another to drive his vehicle. We conclude that the mere observation of a vehicle

being driven by someone of the same gender as the unlicensed owner is insufficient to give rise to a reasonable suspicion of unlawful activity. A contrary holding would endorse the sort of arbitrary invasions of personal liberty and privacy that the Fourth Amendment is designed to hold in check. Officers could run owner registration and driver's license checks for any vehicle they see in operation, seeking an owner without an Idaho license and a driver of the same gender, and would be authorized to stop any vehicle meeting these criteria. In our judgment, the Fourth Amendment safeguard requires more particularized suspicion to justify the "constitutionally cognizable intrusion" of stopping a motorist."

5. While Mr. Willoughby was not stopped, he was seized and the same standards apply.
6. The court concludes that Mr. Willoughby and the other persons at the scene were seized when they were first contacted by Officer Gillmore and that the seizure was not supported by reasonable suspicion. Therefore all of the evidence from the point of the first contact with Mr. Willoughby by Officer Gillmore must be suppressed.
7. Even if the initial seizure had been lawful, a seizure based upon reasonable suspicion can only continue for a brief time to complete its purpose. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The purpose here was to investigate whether a fight had occurred and who might have been involved. The court concludes that the continued seizure of Mr. Willoughby and the others past the time they disclosed they had no knowledge of any fight was too long. For this reason also any evidence obtained later relative to the DUI of Mr. Willoughby must be suppressed.
8. Had the officers turned off their overhead lights before approaching Mr. Willoughby and the others there would have been no seizure and the questioning would have been permissible. As there would have been no seizure.

ENTERED this 8th<sup>th</sup> day of December, 2005.

  
Benjamin R. Simpson  
Magistrate Judge



**Certificate of Service**

**I hereby certify that I served copies of the foregoing ORDER, as follows:**

**William Douglas, Prosecuting Attorney by Fax** 2146-1833

**Frederick Loats, by Fax** 664-3644

**Daniel J. English, Clerk of the District Court**

**By** Barbara Watkins **Deputy Clerk**

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS

FILED: 12-4-05

AT 3:16 O'CLOCK PM  
CLERK, DISTRICT COURT

Barbara Watkins  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, )

PLAINTIFF, )

CASE NO. <sup>2005-13471</sup> CR2003-15314

ORDER TO SUPPRESS

CHRISTOPHER W. WILLOUGHBY, )

DEFENDANT. )

For the reasons stated in the findings of fact and conclusions of law entered  
by the court today,

**IT IS HEREBY ORDERED, as follow:**

All of the evidence obtained in this case from the first contact by Officer  
Gillman is suppressed.

ENTERED this 8th<sup>th</sup> day of December, 2005.

Benjamin R. Simpson  
Magistrate Judge

**Certificate of Service**

**I hereby certify that I served copies of the foregoing ORDER, as follows:**

**William Douglas, Prosecuting Attorney by Fax** 446-1833

**Frederick Loats, by Fax** 664-3644

**Daniel J. English, Clerk of the District Court**

**By** Barbara Watkins **Deputy Clerk**

Session: Simpson121905A  
Session Date: 2005/12/19  
Judge: Simpson, Benjamin  
Reporter:

Division: MAG  
Session Time: 07:43

Courtroom: Courtroom4

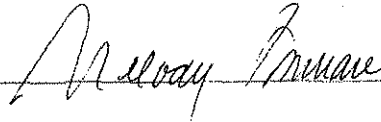
Clerk(s):  
Inman, Melody

State Attorney(s):  
Brooks, Ken  
Christianson, John  
Gowey, Roy  
Madsen, Henry  
Nunley, Shawn  
Ryan, Joel

Public Defender(s):  
Clapin, Michael  
Graham, Suzi  
Lawlor, Edward  
Palmer, Michael  
Reuter, Dennis  
Schwartz, Christopher

Prob. Officer(s):

Court interpreter(s):



Case ID: 0024

Case number: CR2005-13471  
Plaintiff:  
Plaintiff Attorney:  
Defendant: Willoughby, Christopher  
Co-Defendant(s):  
Pers. Attorney:  
State Attorney:  
Public Defender:

2005/12/19  
10:58:21 - Operator  
Recording:  
10:58:21 - New case  
Willoughby, Christopher  
10:58:29 - Judge: Simpson, Benjamin  
calls case for status

10:58:37 - Add Ins: DA, Fred Loats  
move dismiss

10:58:45 - State Attorney:  
Blake Swenson-obj dismissal;silent;willl appeal

10:59:20 - Judge: Simpson, Benjamin  
dismiss case without prejudice

11:00:03 - Operator  
Stop recording:

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STATE OF IDAHO V  
CHRISTOPHER MARTIN WILLOUGHBY  
1015 E HASTINGS  
COEUR D'ALENE ID 83815  
SSN # [REDACTED] DL# [REDACTED]  
DOB: [REDACTED] AGENCY: COEUR D'ALENE PD  
CASE # CR-2005-0013471 CITATION # 77458  
CHARGE: IIS-8004 M DRIVING UNDER THE INFLUENCE  
AMENDED:

JUDGMENT  
FILED 12.19.05 AT 1:10 PM  
CLERK OF THE DISTRICT COURT  
BY [Signature] DEPUTY  
BOND: Surety - \$2000.00

The defendant having been fully advised of his/her statutory and constitutional rights including the right to be represented by counsel, and

- |   |  |
|---|--|
| <input type="checkbox"/> Been advised of right to court appointed counsel if indigent | <input type="checkbox"/> Judgment--Not Guilty                              |
| <input type="checkbox"/> Defendant waived right to counsel                            | <input type="checkbox"/> Judgment on Trial--Guilty                         |
| <input type="checkbox"/> Defendant represented by counsel                             | <input type="checkbox"/> Judgment for Defendant / Infraction               |
| <input type="checkbox"/> Judgment, Plea of Guilty / Rights Waived                     | <input type="checkbox"/> Judgment for State / Infraction                   |
| <input type="checkbox"/> Withheld Judgment <input type="checkbox"/> Accepted          | <input type="checkbox"/> Bond Forfeited / Conviction Entered - Case Closed |
| <input checked="" type="checkbox"/> Dismissed <u>Rule 48</u>                          | <input type="checkbox"/> Bond Forfeited / Dismissed                        |

**MONIES ORDERED PAID:** A \$2.00 handling fee will be imposed on each installment.

<input type="checkbox"/> Fine / Penalty \$ _____	Costs \$ _____	<input type="checkbox"/> Probation Fee \$10.00	Suspended \$ _____
<input type="checkbox"/> Pay by _____, or enroll in time payment program BEFORE due date.			
<input type="checkbox"/> Community Service _____ hours by _____	Setup Fee \$ _____	Insurance Fee \$ _____	
<input type="checkbox"/> Reimburse _____			
<input type="checkbox"/> Restitution _____			
<input type="checkbox"/> Bond Exonerated, provided that any deposit shall first be applied pursuant to Idaho Code 19-2923 in satisfaction of outstanding fines, fees and costs with any remainder to be refunded to the posting party.			
<input type="checkbox"/> No Contact Order, as condition of bond, terminated.			

**INCARCERATION ORDERED:**

<input type="checkbox"/> Jail _____ days, Suspended _____ days, Credit _____ days
<input type="checkbox"/> Report to Jail _____
<input type="checkbox"/> Release _____
<input type="checkbox"/> Work Release Authorized (if you qualify) <input type="checkbox"/> In-Home Monitoring _____
<input type="checkbox"/> Sheriff's Community Labor Program in lieu of Jail (if you qualify) _____ hours by _____ Must sign up within 7 days.

**DRIVING PRIVILEGES SUSPENDED** \_\_\_\_\_ days commencing \_\_\_\_\_

REINSTATEMENT OF DRIVING PRIVILEGES MUST BE ACCOMPLISHED before you can drive. Apply to DRIVER'S SERVICES, P.O. Box 7129, Boise, ID. 83707-1129.

☐ Temporary Driving Privileges Granted commencing \_\_\_\_\_  
To, from and for work purposes / required medical care / court ordered alcohol program / community service. Must carry proof of work schedule and liability insurance at all times. Not valid if insurance expires.

**PROBATION ORDERED FOR** \_\_\_\_\_ YEAR(S) ON THE FOLLOWING CONDITIONS:

<input type="checkbox"/> Violate no federal, state or local laws more serious than an infraction.	<input type="checkbox"/> Supervised - See Addendum
<input type="checkbox"/> Maintain liability insurance on any vehicle that you drive.	<input type="checkbox"/> Commit no similar offenses.
<input type="checkbox"/> Do not operate a motor vehicle with any alcohol in your bloodstream.	
<input type="checkbox"/> You must submit to any blood alcohol concentration test requested of you, with reasonable cause, by a peace officer.	
<input type="checkbox"/> Obtain a Substance Abuse/Battery Evaluation, and file proof of evaluation, within _____ days.	
<input type="checkbox"/> Enroll in _____ program, and file proof, within _____ days. File proof of completion within _____ days.	
<input checked="" type="checkbox"/> Notify the court, in writing, of any address change within 10 days. Agrees to accept future service by mail at the last known address.	
<input type="checkbox"/> Interlock ignition device required on vehicle for _____ year(s). To be installed per attached addendum.	
<input type="checkbox"/> Other _____	

THE SUSPENDED PENALTIES ARE SUBJECT TO YOUR COMPLIANCE WITH ALL TERMS HEREIN

THE DEFENDANT HAS THE RIGHT TO APPEAL  
THIS JUDGMENT WITHIN 42 DAYS

[Signature]  
Date 12.19.05 Judge # 390

Copies To:  
Def. [Signature] Def. Atty. [Signature] [ ] Pros. [Signature] [ ] Other \_\_\_\_\_  
[ ] Jail (fax 446-1407) [ ] KCSO RECORDS fax 446-1307 (re: NCO)  
[ ] Dr. Serv. [ ] Auditor [ ] Com. Serv. [ ] AMP (fax 446-1990) Date \_\_\_\_\_ Deputy Clerk \_\_\_\_\_

055

**ORIGINAL**

WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 Govt. Way/Box 9000  
Coeur d'Alene, ID 83814  
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:  
BLAKE G SWENSON

**ASSIGNED TO  
JUDGE HOSACK**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff/  
Appellant,

vs.

CHRISTOPHER MARTIN WILLOUGHBY,

Defendant/  
Respondent.

Case No. **M05-13471**

**NOTICE OF APPEAL**

TO: THE ABOVE NAMED RESPONDENT, CHRISTOPHER MARTIN WILLOUGHBY, HIS ATTORNEY OF RECORD, FREDERICK G. LOATS, AND THE CLERK OF THE ABOVE ENTITLED COURT:

1. The above named Appellant appeals against the above named respondent, to the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, from the decision granting Defendant's Motion to Suppress Evidence filed by the Court on December 9, 2005, and Subsequent Motion to Dismiss entered in the above entitled matter in the District Court in the County of Kootenai, on December 19, 2005, by the Honorable Benjamin Simpson presiding.

2. The party has a right to appeal and the Judgment described above in paragraph one is appealable pursuant to Rule 54.1(d) of the Idaho Criminal Rules.

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2005 DEC 20 PM 3:53

CLERK DISTRICT COURT

DEPT.

3. This appeal is made upon matters of law and fact.


4. Appellant requests the preparation of the standard reporter's transcript of the Motion to Suppress held on November 14, 2005, at 1:30pm and accompanying briefs before the Honorable Benjamin Simpson. Said hearings were tape recorded and said tapes are in the possession of the Clerk of the court.

5. The Appellant requests the preparation of the entire clerk's standard record.

6. The issue on appeal is whether the District Court improperly granted the defendant's Motion to Suppress.


7. I hereby certify that a true and correct copy of this Notice of Appeal was personally served upon Frederick G. Loats office pursuant to Rule 54.4(h) of the Idaho Criminal Rules, by placing a copy of the same in the mail on the 20 day of December, 2005.

DATED this 20 day of December, 2005.

  
BLAKE G. SWENSON  
Deputy Prosecuting Attorney

#### CERTIFICATE OF MAILING

I hereby certify that on the 20 day of Dec, 2005, a true and correct copy of the foregoing NOTICE OF APPEAL was cause to be mailed and/or sent interoffice mail to:  
FREDERICK G. LOATS  
FAXED 208-664-3644





WILLIAM J. DOUGLAS  
Prosecuting Attorney  
501 N. Government Way/Box 9000  
Coeur d'Alene, ID 83816-9000  
Telephone: (208) 446-1800

BLAKE G. SWENSON  
Deputy Prosecuting Attorney

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2006 MAR 24 PM 2: 08

CLARK DISTRICT COURT

*Aman Lee McCarell*  
DEPUTY *Mc*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

*Plaintiff—Appellant,*

vs.

CHRISTOPHER M. WILLOUGHBY,

*Defendant—Respondent.*

Case No. CR-M05-13471

**APPELLANT'S BRIEF**

Appeal from the District Court of the First Judicial District of the  
State of Idaho, in and for the County of Kootenai, Magistrates  
Division. The Honorable Benjamin Simpson, presiding.

Attorney for Appellant:

Kootenai County Prosecuting Attorney  
P.O. Box 9000  
Coeur d'Alene, Idaho 83816  
Phone: (208) 446-1800  
Fax: (208) 446-1833

Attorney for Respondent:

Frederick G. Loats  
111 North Second Street  
P.O. Box 831  
Coeur d'Alene, Idaho 83814  
Phone: (208) 667-6424  
Fax: (208) 664-3644

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I.

STATEMENT OF THE CASE

On Monday, November 14, 2005, oral argument was heard concerning the Respondent's Motion to Suppress evidence arising out of a search conducted by Officers Gillmore and Carroll of the Coeur d'Alene Police Department. After oral argument, the Honorable Benjamin Simpson requested that each party brief their positions before final ruling. On December 8, 2005, the trial court ruled in favor of the Respondent's Motion to Suppress. It is from this decision that the State brings the foregoing appeal.

The underlying facts of this case are of particular import. At approximately 1:30 a.m. on July 4<sup>th</sup> of 2005, Officer Gillmore was on routine patrol when he received word from dispatch that a physical fight was in progress in the parking lot of 1053 Emma Avenue in Kootenai County, State of Idaho. Tr., p.3, Ls. 13-25. Approximately two minutes later, Officer Gillmore arrived at the dispatched location. Tr. p.4, Ls. 5-7. Following closely behind Officer Gillmore was Officer Carroll who arrived at the dispatched location in a separate patrol vehicle. Tr. p.24, Ls. 24-25.

Once both officers arrived at the dispatched location, they witnessed a vehicle parked perpendicular behind a row of parked cars with four individuals around it and two other individuals walking towards an apartment. Tr. p.21, Ls. 6-11. Each officer initially entered the parking lot with the sirens and lights activated on their respective patrol cars. Tr. p.4, Ls. 3-4. Tr. p. 25, Ls. 2-4. Officer Gillmore parked his patrol car roughly fifteen feet from the vehicle and left his lights on. Tr. p.13, Ls. 8-13. Officer Carroll parked behind Officer Gillmore's car on the drivers side. Tr. p.25, Ls. 7-16.

As Officer Gillmore stepped out of his patrol car to ask the individuals around the vehicle about the fight, the Respondent exited the driver's side door of the improperly

parked vehicle. Tr. p.17, Ls. 9-17. Officer Gillmore proceeded to question the Respondent and surrounding individuals about the fight. Tr. p.5, Ls. 4-6. While the Respondent answered Officer Gillmore's questions and stated that no fight had occurred, Officer Gillmore noticed the odor of an alcoholic beverage emitting from the Respondent's breath and that his eyes appeared glassy. Tr. p.5, Ls. 12-14. In addition to telling Officer Gillmore that there was no fight at the location, the Respondent stated that he was driving the vehicle. Tr. p.14, Ls. 22-23.

While Officer Gilmore was questioning the individuals around the car, Officer Carroll questioned the two individuals that were walking towards a nearby apartment. Tr. p.21, Ls. 14-16. Both of these individuals stated to Officer Carroll that no fight occurred within the parking lot and continued towards the apartment. Tr. p.21 Ls. 19-20. Officer Carroll then contacted Officer Gillmore, who explained that the Respondent was possibly driving under the influence. Tr. p.22, Ls. 1-2. Subsequently, the Respondent was arrested for DUI.

## II.

### ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR WHEN IT HELD THAT OFFICER GILLMORE SEIZED THE RESPONDENT BY ACTIVATING HIS SIREN AND LIGHTS?
2. IF THERE WAS A SEIZURE, DID THE TRIAL COURT ERR WHEN IT HELD THAT THE SEIZURE WAS NOT SUPPORTED BY REASONABLE SUSPICION?
3. DID THE TRIAL COURT ERR WHEN IT HELD THAT EVEN IF THE SEIZURE WAS LAWFUL, THE OFFICERS DETAINED THE RESPONDENT LONGER THAN WAS NEEDED TO FULFILL THE INITIAL INVESTIGATION OF A FIGHT?

### III.

#### ARGUMENT

##### I. Standard of Review

The district court's scope of appellate review upon appeal from the magistrate's division of the district court shall be as follows:

The district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court.

Rule 54.17, I.C.R.; Rule 83(u), I.R.C.P; *see also Pieper v. Pieper*, 125 Idaho 667, 669, 873 P.2d 921, 923 (Idaho Ct. App. 1994). The Court exercises free review over questions of law. *State v. Young*, 136 Idaho 711, 39 P.3d 651 (Idaho Ct. App. 2001).

When an appellate court is called to review factual issues, the customary standard of clear error is used to determine whether, after reviewing the record, the "court is left with a definite and firm conviction that a mistake has been committed" . . . and deference will be given to the factual finds of the lower court "if it is supported by substantial and competent, though conflicting evidence." *State v. Curtis*, 106 Idaho 483, 680 P.2d 1383 (Idaho Ct. App. 1983).

The Court exercises free review over questions of law. *State v. Young*, 136 Idaho 711, 39 P.3d 651 (Idaho Ct. App. 2001). The judgment of the trial court will be affirmed on appeal if it is capable of being upheld on any theory. *Ustick v. Ustick*, 104 Idaho 215, 222, 657 P.2d 1083 (Idaho Ct. App. 1983).

- II. The Trial Court erred by holding that the presence of lights on Officer Gillmore's patrol car and the vicinity in which he parked during his initial contact with the Respondent constituted a seizure.

Generally, a person is seized within the meaning of the Fourth Amendment if the officer restrains the person's liberty by either 1) a show of authority resulting in actual submission by the suspect, or 2) application of physical force to the suspect's body. *See California v. Hodari D.*, 499 U.S. 621, 111 S.Ct. 1547 (1991); *State v. Reese*, 132 Idaho 652, 981 P.2d 212 (Idaho 1999). Not all personal contact between police and citizens implicate the Fourth Amendment. *Reese* at 653, 981 P.2d 213. The critical inquiry in determining whether a seizure has occurred is whether, taking into account all of the circumstances surrounding the encounter, police conduct would have communicated to a reasonable person the he was not at liberty to ignore police presence and go about his business. *State v. Fry*, 122 Idaho 100, 103, 831 P.2d 942, 945 (Idaho Ct. App. 1991).

In its Conclusions of Law, the trial court held that because the patrol vehicles entered the parking lot with lights and sirens on, parked in close proximity to the Respondent's vehicle, and kept their lights on through their initial questioning, the surrounding circumstances demonstrated that Respondent was seized. *Findings of Fact, Conclusion of Law.*, p. 2.

Idaho case law has held that certain police action during encounters with citizens does not amount to a seizure. *See e.g., State v. Nelson*, 134 Idaho 675, 8 P.3d 670 (Idaho Ct. App. 2000)(holding that driver of motor vehicle, was not seized when officer gestured him to pull over); *Reese* at 214, 981 P.2d 214 (holding that a seizure did not occur where the officer was advised by an unknown informant that the Defendant appeared to be driving while intoxicated and the officer asked the Defendant questions about his sobriety after a passenger in the defendant's vehicle retrieved the defendant from the residence where the car was parked); *State v. Zubizarreta*, 122 Idaho 823, 839 P.2d 1237 (Idaho Ct. App. 1992)(holding that defendant was not seized while sitting in a parked vehicle with

the engine running and requested by officer to turn the engine off and roll down the window); *State v. Pick*, 124 Idaho 601, 861 P.2d 1266 (Idaho Ct. App. 1993).

In *Pick*, a deputy sheriff, after being notified by a fellow officer that the defendant's vehicle was driving erratically, pulled his patrol car behind the defendant's then parked truck, turned on the patrol car's rear amber flashing lights, approached the truck, and asked the defendant if she was having vehicle problems. *Pick* at 602, 861 P.2d 1267. While speaking to the defendant, the deputy noticed the odor of alcohol and eventually developed a reasonable suspicion that the defendant was driving under the influence. *Id.*

In holding that the deputy's initial contact did not constitute a seizure, the Court of Appeals reasoned that "the officer showed no sign of authority or force restricting Pick's freedom of movement other, than his uniform and the fact that he wanted to talk with her. No seizure occurs until an officer actually restrains the person's liberty by physical force or show of authority." *Id.* at 605, 861 P.2d 1270.

Similarly, Officers Gillmore and Carroll were responding to a location based on a dispatch call. Once they responded, they saw the Respondent's vehicle parked in the dispatched location. As in *Pick*, they activated their lights and approached the Respondent and several others to ask questions about the fight. No seizure had occurred at this point because none of the actions by Officers Gillmore and Carroll restricted the Respondent's and the other individuals' liberty by physical force or show of authority. In fact, the two individuals that were walking towards an apartment that were questioned by Officer Carroll continued on to that apartment after telling Officer Carroll that no fight had occurred. Tr. p.21, Ls. 14-20. Furthermore, the Respondent exited his vehicle upon seeing Officer Gillmore and was never instructed to remain where he was located. Tr.



p.17, Ls. 9-17. At no point during the initial contact with the Respondent did either officer control or restrain the Respondent's movements with verbal commands or physical force.

The holding of the trial court supports the proposition that any time a police officer enters a parking lot with lights and sirens activated, the persons in the vicinity of the patrol car at that moment would be seized. This proposition differs from the rule stated in *Matter of Mackey* which the trial court based its holding. Findings of Fact, Conclusion of Law. p. 2. In *Mackey*, the Idaho Court of Appeals stated that when a patrol vehicle has its overhead lights on, it can constitute a seizure. *Matter of Mackey*, 124 Idaho 585, 587, 861 P.2d 1250, 1252 (Idaho Ct. App. 1993). The court, however, ultimately held that the defendant was not seized because he did not notice the officer's lights before the initial contact. *Id.*

Granted, Idaho Code §49-625 does require a driver of a motor vehicle to pull to the side of a road and stop if approached by an authorized emergency or police vehicle making use of an audible or visible signal. I.C. §49-625. Such an action certainly would constitute a seizure under the Fourth Amendment. This provision, however, does not apply to the facts at bar because the Respondent's vehicle was parked at the time Officer Gilmore initially encountered him. Tr. p.21, Ls. 6-11.

The sole fact that an officer activates his overhead lights when approaching a parked vehicle, however, is insufficient to find that a seizure occurred. Instead, all the surrounding circumstances must be considered. *Fry* at 103, 831 P.2d at 945. Here, although Officers Gillmore and Carroll entered the parking lot with sirens initially, then kept their lights on as they parked near the Respondent's vehicle, there was no reason for the Respondent at that time to believe that the officers were there to speak to him. Like

the two individuals contacted by Officer Carroll, the Respondent at that time was free to leave had he chosen so. As a result, the trial court erred by holding that a seizure occurred because it did not consider all of the facts surrounding the initial encounter.

III. Alternatively, if there was in fact a seizure, the Trial Court erred by holding that Officer Gillmore lacked reasonable suspicion to justify the seizure.

Even if the trial court was correct in holding that a seizure did occur, it erred in holding that the seizure was unlawful because Officer Gillmore lacked reasonable suspicion. Generally, the stop and detention of a suspect is justified under the Fourth Amendment if the officer has a reasonable suspicion, based on specific and articulable facts, that the suspect has been, is, or is about to engage in criminal activity. *See State v. Benefiel*, 131 Idaho 226, 953 P.2d 976 (Idaho 1998). Although reasonable suspicion requires a lower quantum of proof than probable cause, the information underlying the stop must be based on more than mere speculation. *See State v. Flowers*, 131 Idaho 205, 953 P.2d 645 (Idaho Ct.App. 1998).

In its Conclusions of Law, the trial court determined that the only information provided to Officers Gillmore and Carroll was that a fight was in progress at the dispatched location, and that they lacked any further information on who was involved in the fight or if there was a vehicle involved. Based on these circumstances, the trial court, analogizing the facts at bar to the facts in *State v. Cerino*, concluded that the officers lacked reasonable suspicion to justify the seizure of the Respondent.

The facts in *Cerino* are distinguishable from the facts at bar. In *Cerino*, a detective responded to a residence after an anonymous tipster stated that a vehicle similar to that which the defendant was driving would arrive while transporting drugs. *State v. Cerino*, 117 P.3d 876, 877 (Idaho Ct.App. 2005). Upon arrival, the officers saw the

described vehicle at the residence and ran a check on its registration to determine who was registered to drive the vehicle. *Id.* Dispatch returned with two names, one of which being the defendant, who at the time did not hold a valid drivers license. *Id.* The detective then witnessed a male exiting the residence towards the vehicle, assumed it was the defendant, and requested that another officer initiate a traffic stop for driving with an invalid license. *Id.*

The Idaho Court of Appeals ultimately held that the officers illegally seized evidence of methamphetamines after the arrest of the defendant because they did not have enough information to acquire a reasonable suspicion that the defendant was in fact not licensed to drive the vehicle. *Id.* at 878. After the State conceded that the anonymous informant lacked sufficient indicia of reliability to create reasonable suspicion, the court essentially determined that the assumptions made by the detective in running a registration check and seeing a male exit the residence into the vehicle was not sufficient to warrant the intrusion of a vehicle stop. *Id.*

Here, the facts are easily distinguishable. Although Officer Gillmore received information from an unknown party through dispatch, he responded to the scene approximately two minutes after receiving such information. Tr. p.4, Ls. 5-7. The detective in *Cerino* was conducting surveillance in stakeout-like setting as opposed to immediately responding to the anonymous tipster's information. *Cerino* at 877. Upon responding to the dispatched location late at night, Officer Gillmore witnessed several individuals in the parking lot surrounding a vehicle. Tr. p.21, Ls. 6-11.

Given the facts that Officer Gillmore quickly responded to dispatch's request, that it was approximately 1:30 A.M., and that there were no other individuals in the parking lot at that time, the totality of the circumstances created a reasonable suspicion that the

individuals he observed were the subjects of the dispatched information. Certainly a group of individuals late at night in a location where an alleged fight has just occurred creates a stronger suspicion than a male seen entering a vehicle long after information about the vehicle was provided to the officer. *See State v. Hankey*, 134 Idaho 844, 11 P.3d 40 (Idaho 2000)(anonymous information from police dispatch coupled with officer's observations established reasonable suspicion to stop defendant).

Finally, Appellant acknowledges that Idaho case law has held that ascertaining the identity of the dispatch informant bolsters the officer's reasonable suspicion. *See e.g., State v. Larson*, 135 Idaho 99, 15 P.3d 334 (Idaho Ct. App. 2000)(police dispatch information from named citizen informant established reasonable suspicion to stop defendant for driving under the influence); *State v. Salato*, 137 Idaho 260, 47 P.3d 763 (Idaho Ct. App. 2001)(description of robber and vehicle provided by named citizen informant via dispatch justified high risk traffic stop).

Appellant stresses, however, that although the informant's basis of knowledge, veracity, and reliability are relevant in evaluating an informant's tip, the facts must be reviewed in light of the totality of the circumstance. *See generally Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983); *See also Salato* at 260, 265 47 P.3d 768 (stating that an officer's reasonable suspicion grounded in his perceptions and inferences may be further supported by external information such as an informant's tip conveyed through police dispatch). Since Officer Gillmore quickly responded to the unknown informant's tip via dispatch and witnessed several individuals in the location identified to dispatch by the informant, the totality of the circumstances justified his reasonable suspicion. As a result, the trial court erred in holding otherwise.

IV. The Trial Court further erred by holding that the Respondent was held longer than necessary to fulfill the initial investigation of the fight.

In its decision, the trial court also held that even if the initial seizure had been lawful, it can only continue for a brief time to complete its purpose. Findings of Fact, Conclusions of Law. p.3. In assessing whether a detention is too long in duration to be justified as an investigative stop, the court should consider whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. *State v. Buti*, 131 Idaho 793, 797, 964 P.2d 660, 664 (Idaho 1998).

The Court of Appeals of Idaho has recognized that an officer who has lawfully stopped and contacted a suspect for one offense may develop reasonable suspicion for another offense justifying a continued investigatory detention. *State v. Schmadeka*, 136 Idaho 595, 38 P.3d 633 (Idaho Ct. App. 2001), *State v. Goodwin*, 121 Idaho 517, 826 P.2d 478 (Idaho Ct. App. 1991). Further, in *State v. Reed* the Court of Appeals of Idaho upheld the idea that in certain circumstances an officer may continue a contact with a suspect even after the initial reasonable suspicion for the stop was found to be wrong. *State v. Reed*, 129 Idaho 503, 927 P.2d 893 (Idaho Ct. App. 1996).

Here, testimony at the suppression hearing revealed that it was Officer Gillmore's initial questioning of the Respondent that resulted in him noticing the odor of alcohol emitting from his breath. Tr. p.16 Ls. 6-21. Officer Gilmore further testified that his initial conversation with the Respondent lasted no more than two minutes. Tr. p.17 Ls. 2-4. By first witnessing the Respondent exit the vehicle from the driver's side door, then detecting the presence of alcohol in the Respondent's breath as he answered questions about the fight, Officer Gillmore had reasonable suspicion to transfer the focus of his

investigatory detention to the Respondent for the crime of driving under the influence of alcohol. Since it was Officer Gillmore's initial questioning of the Respondent surrounding the existence of a physical fight that gave rise to his suspicion that the Respondent was driving under the influence, the trial court erred in concluding that the initial seizure of the Respondent was too long for Officer Gillmore to fulfill his initial investigation. Officer Gilmore acted quickly to dispel his suspicions of the fight, and in so acting, he detected the odor of alcohol in the Respondent's breath.


V.

CONCLUSION

In sum, Appellant requests that this matter be reversed and remanded to Magistrate Court for further proceedings for the following reasons: First, the trial court erred in holding that a seizure occurred during the officer's initial encounter with Respondent because it did not consider all the facts surrounding the contact. Secondly, even if there was a seizure, the trial court erred in holding that the seizure lacked reasonable suspicion because it did not consider the officer's suspicion in light of the totality of the circumstances. Finally, the trial court erred in holding that the Respondents initial detention was too long because Officer Gillmore did act diligently to dispel his suspicions of the fight.

DATED this 24 day of March, 2006.

WILLIAM J. DOUGLASS  
Kootenai County Prosecuting Attorney

  
Blake G. Swenson  
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

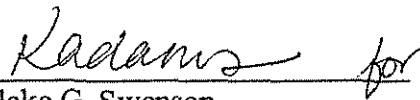
I hereby certify that on the 24 day of March, 2006, a true and correct copy of the foregoing **APPELLANT'S BRIEF** was caused to be:

☐ hand delivered to:

☒ mailed to:

☒ faxed to:

Frederick G. Loats  
111 North Second Street  
P.O. Box 831  
Coeur d'Alene, ID 83814  
Phone: (208) 667-6424  
Fax: (208) 664-3644

  
\_\_\_\_\_  
Blake G. Swenson  
Deputy Prosecuting Attorney

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
FILED

**FREDERICK G. LOATS**  
*Attorney at Law*  
2005 Ironwood Parkway-Suite 210  
P. O. Box 831  
Coeur d'Alene, ID 83814  
Telephone (208)667-6424  
Fax: (208)664-3644  
ISB No. 2147

2006 APR 18 PM 3:05

CLERK DISTRICT COURT  
*Amie DeMott*  
DEPUTY

**Attorney for Defendant**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	Case No. CR-2005-0013471
	)	
vs.	)	<b>BRIEF OF RESPONDENT</b>
	)	
CHRISTOPHER MARTIN WILLOUGHBY,	)	
	)	
Defendant-Respondent.)	)	

***Statement of the Case***

(i)

**Nature of the Case**

The state has appealed from an Order of Dismissal, entered after a decision granting a Motion to Suppress.

(ii)

**Course of the Proceedings Below**

The Defendant-Respondent, Mr. Willoughby, was charged with the offense of driving while



under the influence. He plead not guilty and filed a Motion to Suppress, challenging the legality of his initial detention and subsequent arrest.

The Motion was heard on November 14, 2005. The Court took the matter under advisement, and on December 9, 2005 issued its Findings of Fact and Conclusions of Law granting the Motion to Suppress. In its Order, the Court suppressed "[a]ll of the evidence obtained in this case from the first contact [by the police]."

The effect of the Order was to deprive the state of any evidence material or relevant to the charge. On the morning of trial, the Court granted the Defendant's Motion to Dismiss made pursuant to Rule 48, ICR, and the state has thereafter timely filed this appeal.

(iii)

#### Statement of the Facts

At approximately 1:30 a.m. on July 4, 2005, Officers Gilmore and Carroll of the Coeur d'Alene Police Department, responded to a police dispatch report of a "fight in a parking lot" at 1053 West Emma Avenue in Coeur d'Alene. Tr., p. 3-4; 25. Neither officer had any first-hand knowledge of a fight, nor did they receive any more information from "dispatch" as to who the reporting party was, whether the reporting party had actually seen a fight or was reporting hearsay of rumor, or any descriptions as to the number of people, their descriptions, sex, clothing, or any additional details. Tr., p. 10, L 20-23; p. 11, L 12-13; p. 12, L 1-7.

Both officers arrived at the parking lot with overhead lights and sirens on. Tr., p. 4, L 1-4; p. 25, L 1-4. The overhead lights were kept on throughout their subsequent contact with Mr. Willoughby.

Officer Gilmore arrived first, and came to a stop approximately fifteen feet from a vehicle

occupied by Mr. Willoughby, who was sitting in the driver's position. Tr., p. 5, L 1-2. Several other people were near this vehicle. Officer Carroll arrived a short time later, and parked behind and slightly to the left of Officer Gilmore's patrol car. Officer Gilmore made contact with Mr. Willoughby, while Officer Carroll contacted the other people. It was quickly determined that no one had any knowledge of a fight, nor did the officers see any evidence of a fight. Officer Gilmore, however, detected signs that Mr. Willoughby had been drinking, and then turned him over to Officer Carroll, who conducted a DUI investigation and subsequently arrested Mr. Willoughby for that offense.

#### *Statement of the Issues*

1. Are the trial court's findings supported by substantial evidence?
2. Did the trial court err as a matter of law in determining that the detention of the Respondent was unconstitutional?

#### *Argument*

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found." State v. Faith, 141 Idaho 728, 729-730 (Ct. App. 2005).

The trial court's findings are supported by the evidence. Indeed, the only witnesses that testified at the suppression hearing were the police officers. The finding that the Respondent was "seized" within the meaning of the Fourth Amendment is supported by the testimony of the officers that they arrived at the scene with both overhead lights and sirens on. Mr. Willoughby was seated in the driver's position of his motor vehicle at the time. He was not free to leave, and a reasonable

person in his position would have understood that he was not free to ignore the police contact that shortly ensued. See, Idaho Code Section 49-625 (duty to yield to display of overhead lights); Idaho Code Section 49-1404 (a crime, potentially a felony, if one fails to yield to the use of emergency lights); State v. Roark, 140 Idaho 868, 871 (Ct. App. 2004) ["...the activation of the emergency lights is a command for motorists to stop...."]. The fact that the vehicle was not actually moving at the time, or that the police may not have been employing their lights to specifically stop his vehicle, is irrelevant, as the test is determined based upon what a reasonable person in the position of the defendant would have understood his situation to be.

Having determined that a seizure occurred, the next issue to resolve is whether that seizure was supported by a reasonable, articulable suspicion that criminal activity had occurred or was occurring. See, State v. Cerino, 2005 WL 1529654, cited by Judge Simpson in his decision. The record amply demonstrates that no such evidence existed in this case. The state elected not to provide any evidence concerning the report relayed by police "dispatch." As such, the basis for the stop was limited to what the officers heard over the radio: "a fight in a parking lot." They were not provided with any more information than this. This complete lack of any detail deprived the officers of the ability to provide specific and articulable facts justifying a detention of Mr. Willoughby. The Court should therefore affirm the trial Court's decision granting the Motion to Suppress.

Dated this 18 day of April, 2006.

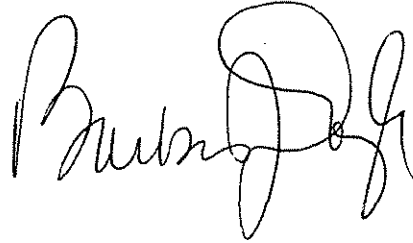
  
FREDERICK G. LOATS  
Attorney for Respondent

# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon counsel for the Appellant by sending the same by facsimile transmission to the Kootenai County Prosecuting Attorney's Office at 446-1833, this 18 day of April, 2006.

  
**FREDERICK G. LOATS**  
 Attorney for Respondent

CASE NO. CRF-2005-13471  
STATE V. CHRISTOPHER M. WILLOUGHBY  
DATE: 06/15/06  
TIME: 3:30 pm  
COURTROOM 10  
JUDGE CHARLES W. HOSACK  
REPORTER: ANITA SELF  
APPEAL HEARING



TAPE #60995

368 J CALLS CASE; Fred Loats and Blake Swenson present; HERE ON APPEAL FROM MAGISTRATE'S DIVISION. I've read Judge Simpson's F/Fact and C/Law and submissions of counsel; briefly scanned transcript. Is this the only record?

DA yes;

PA Court file, record and transcript are record.

410 J Court file has officer's report. I never know whether they are part of the record. The record for Judge Simpson was the hearing.

DA yes – testimony at hearing was record.

J I don't consider police reports as part of record unless counsel agree.

442 PA We agree to submit on the briefs.

DA Correct.

453 J queries DA – he looked at it as to whether it was seizure and concluded that; next question was whether there was a reasonable articulable suspicion for the detention. 2 separate findings. If seizure was lawful, Simpson conceded that if seizure had reasonable articulable suspicion it was extended too far –

Wont argue with Judge Simpson as to whether the person was seized. Then judge says there was no reasonable articulable suspicion.

622 DA Only information officers had was the police dispatch statement – physical fight in a parking lot. They had no description of anyone involved, didn't know if there was a fight, didn't know who reported it, etc. At suppression hearing, State elected not to bring such information before the court. That would not be enough to make a traffic stop. (gives illustration to court re drunk driver); Judge Simpson found no specific enough information to justify the seizure. Therefore, seizure was unconstitutional. The parking lot is not tiny – it is length of 2 football fields.

747 J If citizen calls in a fight in parking lot and dispatch pass on general information to police. Once police gets to parking lot, what is he to do.

774 DA Could enter into parking lot without lights – address/question people in parking lot. You can't infer – burden is up to the state. Police dispatch didn't say some residents at Emma Street who wish to remain anonymous wish to report a fight in parking lot. All we had was physical fight in progress without further identification.

822 J PA needs to put in record of dispatch call in order to establish prima facie case?

833 DA US Supreme Court held in US v. Hensley that police may rely upon dispatch information depending upon how detailed it is in context of stop or seizure, but still their burden. Hensley case was dispatch by another law enforcement agency. Inferences can't be drawn to help state out by supplying information not in existence.

Judge Simpson noted that both officers arrived with sirens and overhead lights on. Once they arrived, if they had turned overhead lights off and then approached Mr. Willoughby, there probably wouldn't have been a seizure.

933 J confirms position of DA

975 DA if information was vague, not enough to detain; the more detailed information is, the more police can rely upon that; it doesn't prevent police officers from contacting people.

Comments re case law in Idaho re overhead lights/seizure. Refers to State v. Pick case. There is a fine line between what is or is not a seizure. If not a seizure, don't get into any 4<sup>th</sup> Amendment analysis.

1150 J You say, if this was a good dispatch call, they have reasonable articulable suspicion. If you have cases that talk about whether an officer stop was not appropriate because of a generalized dispatch call – you say they needed more information on dispatch call.

1270 DA I didn't argue that before Judge Simpson – alternative finding. I believe he was referring to both officers admitted they determined there was no fight after they arrived at scene. Other people around never saw evidence of fight. Reason for dispatch did not exist. No reason to engage Mr. Willoughby further.

1340 J record overlap – what is lapse.

DA I agree.

1399 PA The lights being activated on vehicle are not defacto seizure. They say it is a factor, but not defacto a seizure. In this case it is quite different. Reese argued the motion. Patrol vehicle was 15' behind the vehicle. No direction of the car in the record. There is no stop made. Officers don't recall whether vehicle was running or not. When pulled into parking lot,

they turned sirens off and left lights on – it was 1:30 a.m. They talk to first group of people they see – that is seizure point of it. Simpson clearly focused on that – no analysis – the lights were on so there was a seizure. Idaho law is clear that it can be seizure, but not a defacto seizure. Under totality of circumstances, it was not a seizure.

1568 reasonable articulable suspicion/dispatch call – my recollection of cases say the more specific the better, but other circumstances known to officer that bolster the call take part in the analysis. 2 officers responding within 1 min/30 seconds of another to specific parking lot/several people in parking lot Group of people around car at this location. 1:30 am. Also 2 other individuals walking away – one officer contacted them and the other contacted the group. Had both officers walked up the group and given commands, that would cut against us and go towards seizure. They asked general questions re fight. Some people continued to walk on.

1658 Have at a minimum 7 people/close vicinity/1:30 am. You take in totality of circumstances on what officers knew – group setting. Officers testified that conversation they had with group lasted 1 minute. During initial questioning (1 min) def exhibited signs of intoxication.

1765 J if counsel wished to present addt'l submissions, court will allow that

1786 DA I don't think pedestrians were seized. Twist in this case is that Mr. Willoughby was in his vehicle/that is why he was seized. Driver of the vehicle – wsa given the message he was not free to leave.

1842 J Interesting issue. Using common sense, Mr. Willoughby (the person with the car) is probably the one that is most apt to believe he has been seized.

If generalized call gives officers right to go up and ask questions, then it is ok. But, if it is community caretaking function, and they need a lot more information, and there is no need to have lights on –

2080 DA Officers had right to ask questions. It is use of overhead lights to detain Mr. Willoughby that turns it into seizure – that invokes the constitution.

J TAKE UNDER ADVISEMENT. I'LL LOOK AT DISPATCH CASES.

2152

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

**FREDERICK G. LOATS**  
*Attorney at Law*  
 2005 Ironwood Parkway-Suite 210  
 P. O. Box 831  
 Coeur d'Alene, ID 83814  
 Telephone (208)667-6424  
 Fax: (208)664-3644  
 ISB No. 2147

2006 JUN 20 PM 2:35

CLERK DISTRICT COURT  
DEPUTY  
*[Signature]***Attorney for Defendant**

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	Case No. CR-2005-0013471
	)	
vs.	)	<b>SUPPLEMENTAL BRIEF</b>
	)	<b>OF RESPONDENT</b>
CHRISTOPHER MARTIN WILLOUGHBY,	)	
	)	
Defendant-Respondent.)	)	

At oral argument the Court allowed the parties seven (7) days to file additional Briefs on areas of concern expressed by the Court. This Supplemental Brief will address those issues.

***Mr. Willoughby was "seized" within the meaning of the Fourth Amendment:***

"In determining whether a seizure has taken place, the proper inquiry is 'whether under all the circumstances surrounding the encounter, a reasonable person would have felt free to leave and terminate the encounter.' [Citations omitted]. 'So long as a reasonable person would feel free to disregard the police and go about his business,' an encounter between police and an individual is consensual.'" State v. Roark, 140 Idaho 868, 870 (Ct. App. 2004).

**SUPPLEMENTAL BRIEF  
 OF RESPONDENT - Page 1**



The use of police emergency overhead lights is a command to a motorist to yield and submit to law enforcement contact. State v. Roark, supra; State v. Gutierrez, 137 Idaho 647 (Ct. App. 2002).

Mr. Willoughby was clearly seized when the police arrived on scene in this case. He was sitting behind the wheel of his car when two squad cars, with sirens and overhead lights on, parked within 15 feet of his vehicle. One of the officers made almost immediate contact with Mr. Willoughby. A reasonable person in his situation knew he was not "free to leave and terminate the encounter." As the Court noted at oral argument, if Mr. Willoughby had attempted to drive away he certainly would have been met with more aggressive and forceful police action preventing his departure.

In response to some of the questions posed by the Court, the Respondent concedes that the police had every right to be where they were, and every right to make contact with those they found in the parking lot. However, as discussed *infra*, they lacked a constitutional basis to detain Mr. Willoughby, and their use of overhead lights, and decision to leave the overhead lights on after coming to a stop and parking their vehicles, constituted such a detention. Compare State v. Gutierrez, supra [officers decision to leave overhead lights on after purpose of initial police/citizen encounter served, plus a failure to advise the driver he was free to leave, rendered the encounter involuntary tainting the subsequent consent to search]; State v. Roark, supra [although officer had left his overhead lights on, he had also returned to the driver his driver's license and registration, and twice had told him he was free to leave, therefore encounter was not coercive in nature and "consensual"].

*The "police dispatch" information at issue in this case did not provide the requisite specific and individualized suspicion that Mr. Willoughby was engaged in criminal activity, and therefore the seizure was unconstitutional:*

In Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412 (1990), the Court held that an anonymous "tip" that a specific individual was engaged in criminal activity did not provide the requisite information justifying a detention, but the subsequent police investigation of the "tip" that corroborated most of the details met the constitutional test for a *Terry* stop. In its decision, the Court noted that the primary problem in relying upon an anonymous tip is the lack of veracity, reliability and basis of knowledge of the informant:

"The opinion in *Gates* [Illinois v. Gates, 462 U.S. 213 (1983)] recognized that an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity inasmuch as ordinary citizens generally do not provide extensive recitations of the basis of the everyday observations and given that the veracity of persons supplying anonymous tips is 'by hypothesis largely unknown.' [Citation omitted]. This is not to say that an anonymous caller could never provide the reasonable suspicion necessary for a *Terry* stop. But the tip in *Gates* was not an exception to the general rule, and the anonymous tip in this case is like the one in *Gates*: '[It] provides virtually nothing from which one might conclude that [the caller] is either honest or his information reliable; likewise, the [tip] give absolutely no indication of the basis for the [caller's] predictions regarding [Vanessa White's] criminal activities.'" Alabama v. White, 110 S.Ct. At 2415-2416.

In State v. Deccio, 136 Idaho 442 (Ct. App. 2001), the Moscow police department received

a phone call from a female identifying herself as the best friend of the defendant's wife. She would not provide her name or an address. She told the police that the defendant was suicidal and carrying a firearm, that he had been drinking all day and was intoxicated, and was driving a white Subaru heading to a casino in Lewiston. This information was broadcast over police "dispatch", and a sheriff's deputy later stopped a white Subaru traveling south on US 95 towards Lewiston, being driven by the defendant. The officer has followed the vehicle south on 95, and then through Genessee after it turned off the highway, and had not personally seen any erratic driving or traffic violations. The validity of the stop was therefore dependent on the information received from the anonymous caller, and the Court held this information failed to provide the officer with the reasonable, articulable suspicion required by *Terry*.

The information relayed by police dispatch in this case was far less detailed than in *Deccio* and *Alabama v. White*. It certainly did not provide the requisite individualized suspicion that justified a detention of Mr. Willoughby. For these reasons, the Court should affirm Judge Simpson's decision granting the Motion to Suppress.

Dated this 20 day of June, 2006.

  
FREDERICK G. LOATS  
Attorney for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon counsel for the Appellant by sending the same by facsimile transmission to the Kootenai County Prosecuting Attorney's Office at 446-1833, this **20** day of June, 2006.

  
**FREDERICK G. LOATS**  
 Attorney for Respondent

STATE OF IDAHO  
County of Kootenai

FILED

6-29-06

At 9:14 O'clock A.M.

CLERK OF THE DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

*Appellant—Plaintiff,*

vs.

CHRISTOPHER WILLOUGHBY,

*Respondent—Defendant.*

Case No. CR-05-13471

MEMORANDUM OPINION  
ON APPEAL

Blake Swenson, Kootenai County Prosecuting Attorney, for Appellant.  
Fredrick Loats, Coeur d'Alene, for Respondent.

ISSUES PRESENTED

- I. Whether the Respondent was seized when the police officers entered the parking lot with their patrol vehicles' overhead lights activated.
- II. Whether the police officers had a reasonably articulable suspicion necessary to seize the Respondent.
- III. Whether the seizure was overly extended when the police officers continued to detain the Respondent after it had been established that the original purpose for the officers' presence was not valid.

FACTS AND PROCEDURAL HISTORY

On July 4, 2005, the Defendant-Respondent was charged with Driving Under the Influence of alcohol (DUI). Respondent plead not guilty to the charges and moved to

suppress all evidence associated with the charge because he had been improperly detained and seized before the charges were substantiated.

The underlying facts are as follows: At approximately 1:30 A.M. on July 4, 2005, Officer Gillmore of the Coeur d'Alene Police Department was on routine patrol when he received word from dispatch that a physical fight was in progress in the parking lot of 1053 Emma Avenue in Kootenai County, State of Idaho. Tr. p. 3, Ls. 13-25. No other identifying description was given regarding the parties involved or any other additional details. Tr. p. 10, Ls. 20-23. Approximately two minutes later, Officer Gillmore arrived at the dispatched location. Tr. p. 4, Ls. 5-7. Officer Carroll arrived at the location soon after Officer Gillmore in a separate patrol vehicle. Tr. p. 24, Ls. 24-25. Both officers arrived at the parking lot with their patrol cars' overhead lights and sirens activated. Tr. p. 4, Ls. 1-4, Tr. p. 25, Ls. 1-4. The overhead lights were kept on throughout the subsequent contact between the officers and the Respondent.

Once both officers were at the dispatched location, they witnessed a vehicle parked perpendicular behind a row of parked cars with four individuals surrounding the vehicle and two other individuals walking towards an apartment. Tr. p. 21, Ls. 6-11. Officer Gillmore parked his patrol car roughly fifteen feet from the vehicle and left on his lights. Tr. p. 13, Ls. 8-13. Officer Carroll parked behind Officer Gillmore's car on the driver's side. Tr. p. 25, Ls. 7-16.

As Officer Gillmore stepped out of his patrol car to question the individuals surrounding the vehicle about the fight, the Respondent exited the driver's side door of the improperly parked vehicle. Tr. p. 17, Ls. 9-17. Officer Gillmore proceeded to question the Respondent and the surrounding individuals about the fight. Tr. p. 5, Ls. 4-

6. During questioning about the purported fight, Officer Gillmore noticed the odor of an alcoholic beverage coming from the Respondent's person and observed that his eyes appeared glassy. Tr. p. 5, Ls. 12-14. In addition to telling Officer Gillmore that there was no fight at the location, the Respondent stated that he was driving the vehicle. Tr. p. 14, Ls. 22-23.

While Officer Gillmore was questioning the individuals around the car, Officer Carroll questioned the two individuals that were walking towards a nearby apartment. Tr. p. 21, Ls. 14-16. Both of these individuals told Officer Carroll that no fight occurred within the parking lot and continued walking towards the apartment. Tr. p. 21, Ls. 19-20. Officer Carroll then contacted Officer Gillmore, who explained that the Respondent was possibly driving under the influence of alcohol. Tr. p. 22, Ls. 1-2. Subsequently, the Respondent was arrested for DUI.

On November 14, 2005, oral arguments were heard concerning the Respondent's Motion to Suppress evidence arising out of a search conducted by Coeur d'Alene Police Department Officers Gillmore and Carroll. On December 8, 2005, the trial court ruled in favor of the Respondent's Motion to Suppress. The State appeals from this decision of the Magistrate Court.

### **STANDARD OF REVIEW**

"Upon an appeal from the magistrate's division of the district court, not involving a trial de novo, the district court shall review the case on the record and determine the appeal as an appellate court in the same manner and upon the same standards of review as an appeal from the district court to the Supreme Court under the statutes and law of this state, and the appellate rules of the Supreme Court." I.R.C.P. 83(u)(1). The standard of

review of a suppression motion is bifurcated. State v. Ramos, 142 Idaho 628, 630, 130 P.3d 1166, 1168 (Ct. App. 2005). When a decision on a motion to suppress is challenged, the court is to accept the trial court's findings of fact that are supported by substantial evidence, but the appellate court is free to review the application of constitutional principles to the facts as found. Id. at 630, 130 P.3d at 1168. At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. Id.

When an appellate court is called to review factual issues, the customary standard of clear error is used to determine whether, after reviewing the record, the "court is left with a definite and firm conviction that a mistake has been committed." State v. Curtis, 106 Idaho 483, 680 P.2d 1383 (Ct. App. 1983). Deference will be given to the factual findings of the lower court "if it is supported by substantial and competent, though conflicting evidence." Id.

## DISCUSSION

### **I. The Respondent was Seized when the Police Officers Entered the Parking Lot with Their Overhead Lights Activated.**

"A seizure under the meaning of the Fourth Amendment occurs only 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" State v. Page, 140 Idaho 841, 843, 103 P.3d 454, 456 (2004) (quoting State v. Nickel, 134 Idaho 610, 612-13, 7 P.3d 219, 221-22 (2000)); see also State v. Wixom, 130 Idaho 752, 754, 947 P.2d 100, 1002 (1997). In seeking suppression of evidence based on an allegedly illegal seizure, the burden is on the defendant to show that a seizure occurred." Id. (quoting State v. Reese, 132 Idaho 652, 654 (1999)). "[T]he proper inquiry in determining whether a seizure occurred is whether, under all the



circumstances surrounding an encounter, a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter." Id. (internal quotations omitted); see also State v. Mireles, 133 Idaho 690, 692, 991 P.2d 878, 880 (Ct. App. 1999) (citing Terry v. Ohio, 392 U.S. 1 (1968)). "So long as a reasonable person would feel free to disregard the police and go about his business, an encounter between police and an individual is consensual." Id. (citing Nickel, 134 Idaho at 613, 7 P.3d at 222) (internal quotations omitted).

A traffic stop by a police officer constitutes a seizure of the vehicle's occupants which implicates the Fourth Amendment's prohibition against unreasonable searches and seizures, applied to the states by the Fourteenth Amendment. Delaware v. Prouse, 440 U.S. 648, 652 (1979). A police officer's act of turning on the overhead lights, although not necessarily intended to create a detention, does constitute a technical, *de facto*, detention commanding the individual to remain in place pursuant to Idaho Code § 49-625. Mireles, 133 Idaho at 692, 991 P.2d at 880.

In the instant case, Officers Gillmore and Carroll were responding to a location based on a dispatch call reporting a fight at said location. When the officers arrived at the location, they saw an improperly parked vehicle with several people surrounding it. From this, the officers surmised that the individuals around the vehicle either had been involved in the fight or had witnessed the reported fight. With this assumption, the officers approached the individuals for the purpose of questioning them about the reported fight.

However, the officers had already activated their lights before entering the location. Their overhead lights remain on during the investigation and subsequent arrest

of the Respondent. It would be a stretch to say that a reasonable person would have felt free to leave under the circumstances in this case. The Respondent, given a reasonable person standard, would not have felt free to leave, especially given the fact that he was in the driver's seat of the vehicle at the time of the police officers' arrival.

The finding of the technical detention, which is affirmed, goes only to the Respondent. He was the driver of the vehicle behind which the officer had parked his patrol car with the overhead lights activated. Whether other persons in the car or parking lot were detained is not before this Court.

The State argued at oral argument that the activation of overhead lights is not always a detention. This Court is aware of case law where courts have held that activated overhead lights may not have created a seizure where the lights were activated for the purposes of illumination or officer safety. However, deferring to the factual finding of the trial court, this Court will not disturb the trial court's conclusion that the State failed to meet its burden in introducing evidence into the record to differentiate this case from the rule of Mireles. A court can only speculate as to why the officers left the overhead lights activated.

Therefore, because the officers' overhead lights were activated and a reasonable person would not have felt free to leave, this Court agrees with the trial court and finds that Respondent was seized under the meaning of the Fourth Amendment.

**II. The Police Officers Failed to have a Reasonable Suspicion of Criminal Activity before Seizing Respondent.**

Once a seizure has been found, the burden shifts to the State to prove that the seizure was constitutional. Mireles, 133 Idaho at 692, 991 P.2d at 880. A seizure does not violate the Fourth Amendment if, in light of the circumstances, the actions of the

government officials are found to be reasonable. Wixom, 130 Idaho at 754, 947 P.2d at 1002 (citing United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)). The State may show that a detention was reasonable by establishing: 1) specific articulable facts which justify the officer's suspicion that the detained person is, has been, or is about to be engaged in criminal activity; or 2) that it was part of the officer's community care-taking function. See Terry, 392 U.S. 1; In re Clayton, 113 Idaho 817, 818, 748 P.2d 401, 402 (1988).

Reasonable suspicion may be supplied by an informant's tip or a citizen's report of suspect activity. State v. Larson, 131 Idaho 99, 101, 15 P.3d 334, 336 (Ct. App. 2000). Whether information from such a source is sufficient to create reasonable suspicion depends upon the content and reliability of the information presented by the source. Id. An anonymous tip, standing alone, is generally not enough to justify a stop because "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." Alabama v. White, 496 U.S. 329, 332 (1990). "Although the tip standing alone is insufficient, it may contribute to the necessary reasonable suspicion when coupled with the officer's own corroboration of significant details of the tip." State v. Hankey, 134 Idaho 844, 848, 11 P.3d 40, 44 (2000); see also State v. Cerino, 141 Idaho 736, 738, 117 P.3d 876, 878 (Ct. App. 2005). The validity of a stop is to be evaluated by the "totality of the circumstances" in determining whether the detaining officer had a particularized objective basis for suspecting the particular person of criminal activity. Id. at 847, 11 P.3d at 43.

In Hankey, an officer noticed a blue pickup slowly driving down Highway 95 that was following a woman and child on foot. 134 Idaho at 845, 11 P.3d at 41. After viewing

this odd spectacle, the officer received a dispatch from the Boundary County Sheriff's Department stating that there was "a domestic" involving a blue Mazda pickup at the intersection of Highway 95 and Camp Nine Road. *Id.* The officer then approached the vehicle and used his overhead lights to effectuate a traffic stop. *Id.* When the officer approached the car, he noticed the driver had red eyes and a strong odor of alcohol on his breath. *Id.* After submitting to a breath alcohol test, the driver was arrested for a felony DUI. *Hankey*, 134 Idaho at 848, 11 P.3d at 44. The court held that the unusual activity that the officer had initially observed with the pickup following the woman and child sufficiently corroborated the information in the radio dispatch to provide the requisite reasonable suspicion to make an investigatory stop of the individual. *Id.*

However, in *Cerino*, police officers received an anonymous tip stating that a white Nissan pickup bearing Bannock County license plates was transporting illegal drugs; the rest of the license number was not given. 141 Idaho at 737, 117 P.3d at 877. The tipster also identified a specific residence where the vehicle would stop in the course of the drug transport. *Id.* A detective, while conducting surveillance of the identified house, saw a vehicle matching the tipster's description. *Id.* The detective called in the license number and ran a license check on the registered owners. *Id.* The detective learned that the male registered owner did not have an Idaho driver's license. *Cerino*, 141 Idaho at 737, 117 P.3d at 877. Suspecting that the male driver of the vehicle was the registered owner, the detective requested another officer to stop the driver for operating a vehicle without a license. *Id.* The driver was arrested for driving without a license, and in a subsequent inventory search of the vehicle, officers discovered methamphetamine. *Id.* The court held that the information known to the detective at the time he ordered the stop of the

suspect's vehicle was insufficient to create reasonable suspicion that the driver was involved in unlawful activity. Cerino, 141 Idaho at 739, 117 P.3d at 879.

In the instant case, the officers were dispatched to 1053 Emma Avenue in order to investigate a reported physical fight at that location. The officers, upon reaching the location, did not see any activity resembling a fight. However, they reported seeing a vehicle parked perpendicular behind a row of parked cars with four individuals surrounding the vehicle and two other individuals walking towards an apartment. The officers, with overhead lights on, then approached the people they saw with the intention of investigating the purported fight.

The question becomes whether, given the dispatch call and the observances of the police officers, the trial court should be affirmed as to its conclusion that the totality of the circumstances did not rise to a level of reasonable suspicion where a seizure of Respondent was justified. Because there was so little information given in the police dispatch to the officers, it appears to be a situation much more like Cerino. Therefore, it would be illogical to think that the officers had witnessed enough activity in the parking lot that could be corroborated by the dispatch to rise to a level of reasonable suspicion.

There is nothing in the record stating that either of the officers had witnessed any activity related to a fight. Nor was any proof given that the Respondent was personally identified in any way by the informant or the dispatcher, such as in Hankey. Therefore, the tip, as corroborated by independent police work, did not exhibit sufficient indicia of reliability to provide reasonable suspicion to make the investigatory seizure.

As a result, because there were no indicia of reliability sufficient enough to provide reasonable suspicion, this Court agrees with the trial court that the seizure of the Respondent violated the Fourth Amendment's ban on illegal search and seizures.

**III. If the Seizure of the Respondent would have been Legal, it would not have been Over Extended, as Police Officers are Allowed to Investigate Further Crimes Discovered After an Initial Seizure.**

Any routine stop might turn up suspicious circumstances which could justify an officer asking questions unrelated to the stop. State v. Johnson, 137 Idaho 656, 660, 51 P.3d 1112, 1116 (Ct. App. 2002) (citing State v. Myers, 118 Idaho 608, 798 P.2d 453 (Ct. App. 1990)). "The officer's observations, general inquiries, and events succeeding the stop may – and often do – give rise to legitimate reasons for particularized lines of inquiry and further investigation by an officer." Id. at 660, 51 P.3d at 1116. The extension of a seizure to investigate possible criminal conduct can be justified by reasonable suspicion, which developed during the course of the stop. Id. at 662, 51 P.3d at 1118.

In Johnson, a police officer stopped a car for speeding. 137 Idaho 656, 658, 51 P.3d 1112, 1114. While speaking with the driver, the officer detected the odor of alcohol, observed that the suspect acted extremely nervous, and noticed that the suspect's pupils were dilated and his eyes were bloodshot. Id. Upon suspecting that the driver was under the influence of drugs and/or alcohol, the officer began questioning the individual about his use of drugs or alcohol. Id. The officer also gave the individual several tests, which indicated to the officer that the individual was under the influence of marijuana. Id. During a subsequent search of the individual's person, the officer located a bag of marijuana. Id. The court held that the detention of the individual and the pat-down

search did not violate Fourth Amendment standards because the officer was justified by reasonable suspicion that developed during the course of the stop. Id. at 662, 51 P.3d at 1118.

The instant case runs parallel to the facts in Johnson. In this case, the officers initially detained the Respondent for the purpose of investigating a purported physical fight at the Respondent's location. During questioning of the Respondent in regards to the purported fight, the officers noticed telltale signs of alcoholic intoxication. It was from these observances that the officers began investigating the Respondent's level of intoxication.

Although the officers had not initially detained the Respondent for the purpose of investigating a DUI, the fact that the officers noticed signs that the Respondent was intoxicated gave them reasonable suspicion to continue an investigation in that regard. Consequently, the detention of the Respondent was not overly extended to the point where it would have made the detention unreasonable. This Court, therefore, finds that the trial court was in error when it found that the seizure was overly extended. However, this finding has no bearing on the final outcome in this matter.

### CONCLUSION

For the foregoing reasons, this Court finds that the decision of the trial court should be upheld and the Motion to Suppress all evidence related to the Respondent's arrest for Driving Under the Influence should be granted.

Entered this 28 day of June, 2006.

  
Charles W. Hosack, District Judge

**CERTIFICATE OF MAILING/DELIVERY**

On this 29 day of June, 2006, a true and correct copy of the foregoing was mailed in the U.S. Mail, postage prepaid, sent via facsimile, or sent via interoffice mail as indicated below to the following counsel:

Attorney: Fredrick Loates  
Fax: (208) 664-3644

6-29-06 @ 9:14 Am *[Signature]*

Attorney: Blake Swenson  
Kootenai County Prosecuting Attorney  
Fax: (208) 446-1833

Honorable Ben Simpson - <sup>JD</sup>  
DANIEL ENGLISH  
CLERK OF THE COURT

By *[Signature]*



LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

STEPHEN A. BYWATER  
Deputy Attorney General  
Chief, Criminal Law Division

JESSICA M. LORELLO  
Idaho State Bar # 6554  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
FILED:

2006 AUG -2 PM 3:13

CLERK DISTRICT COURT  
*Cindy O. Bully*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO )

Plaintiff-Appellant, )

vs. )

CHRISTOPHER WILLOUGHBY, )

Defendant-Respondent. )

NO. CR-2005-13471

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, CHRISTOPHER WILLOUGHBY, AND FREDERICK G. LOATS, ATTORNEY, 2005 IRONWOOD PARKWAY - SUITE 210, PO BOX 831, COEUR D'ALENE, IDAHO 83814 AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM OPINION ON APPEAL entered in the above-entitled action on the 29<sup>th</sup> day of June 2006, The Honorable Judge CHARLES W. HOSACK presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.

3. The hearing on the motion to suppress held May 10, 2005, has already been transcribed. The appellant requests that this transcript be included in the record as an exhibit.

4. The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: Brief in Support of Motion to Suppress and Brief in Opposition to Motion to Suppress/Motion in Limine.

5. I certify:

(a) That a copy of this notice of appeal is being served on the reporter.

(b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

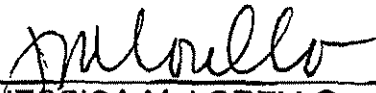
(c) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(d) That arrangements have been made with the Kootenai County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

6. The issue on appeal is whether the magistrate judge erred in suppressing evidence obtained as a result of a DUI arrest.

DATED this 2<sup>nd</sup> day of August 2006.

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General  
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 2<sup>nd</sup> day of August 2006, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

FREDERICK G. LOATS  
ATTORNEY AT LAW  
2005 Ironwood Parkway – Suite 210  
PO Box 831  
Coeur d'Alene, Idaho 83816

JOANN SCHALLER  
COURT REPORTER  
Kootenai County Courthouse  
324 W. Garden Avenue  
PO Box 9000  
Coeur d'Alene, Idaho 83816-9000

BLAKE SWENSON  
KOOTENAI COUNTY PROSECUTOR'S OFFICE  
501 N. Government Way  
PO Box 9000  
Coeur d'Alene, Idaho 83816-9000

THE HONORABLE CHARLES W. HOSACK  
FIRST DISTRICT JUDGE  
Kootenai County Courthouse  
324 W. Garden Avenue  
PO Box 9000  
Coeur d'Alene, Idaho 83816-9000

HAND DELIVERY

MR. STEPHEN W. KENYON  
CLERK OF THE COURTS  
P.O. Box 83720  
Boise, Idaho 83720-0101

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

JML/pm

LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

STEPHEN A. BYWATER  
Deputy Attorney General  
Chief, Criminal Law Division

JESSICA M. LORELLO  
Idaho State Bar # 6554  
Deputy Attorney General  
P. O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

STATE OF IDAHO  
COUNTY OF KOOTENAI  
FILED: <sup>SS</sup>

2006 AUG 22 AM 9:36

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO

Plaintiff-Appellant,

vs.

CHRISTOPHER WILLOUGHBY,

Defendant-Respondent.

NO. CR-2005-13471

AMENDED NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, CHRISTOPHER WILLOUGHBY, AND FREDERICK G. LOATS, ATTORNEY, 2005 IRONWOOD PARKWAY - SUITE 210, PO BOX 831, COEUR D'ALENE, IDAHO 83814 AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the above-named respondent to the Idaho Supreme Court from the MEMORANDUM OPINION ON APPEAL entered in the above-entitled action on the 29<sup>th</sup> day of June 2006, The Honorable Judge CHARLES W. HOSACK presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.

3. The hearing on the motion to suppress held November 14, 2005, has already been transcribed. The appellant requests that this transcript be included in the record as an exhibit. The appellant further requests an audio recording of the hearing held June 15, 2006, on the appeal from the order granting the motion to suppress be included in the record as an exhibit.

4. The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.:

- a) Brief in Opposition to Motion to Suppress/Motion in Limine.
- b) Brief in Support of Motion to Suppress filed December 5, 2005.
- c) Findings of Fact, Conclusions of Law filed December 9, 2005.
- d) Appellant's Brief filed March 24, 2006.
- e) Brief of Respondent filed April 18, 2006.
- f) Supplemental Brief of Respondent filed June 20, 2006.

5. I certify:

(a) That a copy of this notice of appeal is being served on the reporter.

(b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);


(c) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(d) That arrangements have been made with the Kootenai County Prosecuting Attorney who will be responsible for paying for the reporter's transcript;

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

6. The issue on appeal is whether the magistrate judge erred in suppressing evidence obtained as a result of a DUI arrest.

DATED this 22<sup>nd</sup> day of August 2006.



---

JESSICA M. LORELLO  
Deputy Attorney General  
Attorney for the Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 22<sup>nd</sup> day of August 2006, caused a true and correct copy of the attached **AMENDED NOTICE OF APPEAL** to be placed in the United States mail, postage prepaid, addressed to:

FREDERICK G. LOATS  
ATTORNEY AT LAW  
2005 Ironwood Parkway – Suite 210  
PO Box 831  
Coeur d'Alene, Idaho 83816

JOANN SCHALLER  
COURT REPORTER  
Kootenai County Courthouse  
324 W. Garden Avenue  
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BLAKE SWENSON  
KOOTENAI COUNTY PROSECUTOR'S OFFICE  
501 N. Government Way  
PO Box 9000  
Coeur d'Alene, Idaho 83816-9000

THE HONORABLE CHARLES W. HOSACK  
FIRST DISTRICT JUDGE  
Kootenai County Courthouse  
324 W. Garden Avenue  
PO Box 9000  
Coeur d'Alene, Idaho 83816-9000

HAND DELIVERY

MR. STEPHEN W. KENYON  
CLERK OF THE COURTS  
P.O. Box 83720  
Boise, Idaho 83720-0101

  
\_\_\_\_\_  
JESSICA M. LORELLO  
Deputy Attorney General

JML/pm



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,	)	SUPREME COURT
DEFENDANT/APPELLANT	)	CASE NUMBER
	)	33350
vs.	)	CLERK'S CERTIFICATE
	)	
CHRISTOPHER WILLOUGHBY	)	
PLAINTIFF/RESPONDENT	)	

I CINDY O'REILLY Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I further certify that the following will be submitted as exhibits to this Record on Appeal:

TRANSCRIPT: MOTION TO SUPPRESS FILED 1/25/06

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10<sup>TH</sup> day of October 2006.

Clerk of the District Court  
DAN ENGLISH

By: Cindy O'Reilly  
Deputy Clerk

Clerk's Certificate

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

State of Idaho )  
DEFENDANT/APPELLANT )  
 )  
 )  
VS )  
 )  
 )  
CHRISTOPHER WILLOUGHBY )  
PLAINTIFF/RESPONDENT )

SUPREME COURT #33350

CASE #CRF05-13471

CERTIFICATE OF SERVICE

I, Cindy O'Reilly, Deputy Clerk of the District Court of the First Judicial District  
Of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have  
personally served or mailed, by United States Mail, one copy of Clerk's Record to  
each of the attorneys of record in this cause as follows:

FREDERICK LOATS  
ATTORNEY AT LAW  
PO BOX 831  
COEUR D'ALENE ID 83816

Lawrence Wasden  
Attorney General  
State of Idaho  
700 W. Jefferson  
Suite 210  
Boise ID 83720-0010

Attorney for Appellant

Attorney for Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of  
Said Court this 13 day of Oct, 2006.

Dan English  
Clerk of District Court

By Cindy O'Reilly  
Cindy O'Reilly Deputy clerk

CERTIFICATE OF SERVICE

